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S. HRG. 100-1014

INTERNATIONAL CHILD ABDUCTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS AND ADMINISTRATIVE PRACTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1347

A BILL TO FACILITATE IMPLEMENTATION OF THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, AND FOR OTHER PURPOSES

FEBRUARY 23, 1988

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INTERNATIONAL CHILD ABDUCTION ACT

TUESDAY, FEBRUARY 23, 1988

U.S. SENATE,
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:08 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Dennis DeConcini presiding.

Also present: Senators Dixon and Grassley.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. The Subcommittee on Courts and Administrative Practice will come to order for hearings on S. 1347, legislation to implement the Hague Convention on the civil aspects of international parental child abduction.

I am pleased to convene these hearings today. We will hear testimony on legislation necessary to implement this convention on civil aspects of international child abduction.

The Senate unanimously gave its advice and consent to the convention in October 1986. However, implementing legislation is required.

Currently, noncustodial parents who abduct and transport their children across international borders are virtually free from the jurisdiction of American courts. This would change that.

[A copy of S. 1347 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1347

To facilitate implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1987

Mr. SIMON (for himself, Mr. WALLOP, Mr. DIXON, Mr. CRANSTON, Mr. GORE, Mr. STENNIS, and Mr. EXON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To facilitate implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may by cited as the "International Child Abduction Act".

SEC. 2. FINDINGS AND DECLARATION OF PURPOSES.

The Congress finds that—

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The 1980 Hague Convention on the Civil Aspects of International Child Abduction establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(5) This Act is designed to facilitate implementation of the Convention in the United States.

(6) The provisions of this Act are in addition to and not in lieu of the provisions of the Convention.

(7) In enacting this Act the Congress recognizes—

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(8) The Convention and this Act empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

TITLE I—PROVISIONS IMPLEMENTING THE CONVENTION

SECTION 101. DEFINITIONS.

For the purposes of this Act—

(1) "Convention" means the 1980 Hague Convention on the Civil Aspects of International Child Abduction;

(2) "United States Central Authority" means the agency of the Federal Government designated by the President to perform on behalf of the United States the functions of Central Authority set out in the Convention and this Act;

(3) "court" means any court of competent jurisdiction of a State, the District of Columbia, a territory or possession of the United States, or the United States;

(4) "Federal Parent Locator Service" means the service established by the Secretary of Health and Human Services pursuant to section 453 of the Social Security Act (42 U.S.C. 653);

(5) "person" includes any individual, an institution, or any other legal entity or body;

(6) "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(7) "petitioner" means any person who files a petition in court seeking relief under the Convention and this Act;

(8) "respondent" means any person against whose interests a petition is filed pursuant to the Convention and this Act;

(9) "authorities" as used in article 15 of the Convention includes public officials and courts;

(10) "rights of access" means visitation rights;

(11) "wrongful removal or retention" includes a removal or retention of a child prior to the entry of a custody order regarding that child; and

(12) "commencement of proceedings" as used in article 12 of the Convention, with regard to the return of children located in the United States, means the filing of a petition in accordance with section 102(b).

SEC. 102. ADMINISTRATIVE AND JUDICIAL REMEDIES.

(a) The courts of the States, the District of Columbia, and the territories and possessions of the United States, and the United States district courts shall have concurrent original jurisdiction with regard to actions arising under the Convention and this Act.

(b) Any person seeking judicial relief under the Convention and this Act may commence a civil action by filing a petition in any court described in subsection (a) within the jurisdiction of which a child is located at the time the petition is filed.

(c) Notice of an action for the return of a child pursuant to the Convention and this Act shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) A petitioner who seeks return of a child under the Convention and this Act shall establish by a preponderance of the evidence that the child has been wrongfully removed or

retained. A respondent who opposes return of the child has the burden of establishing by clear and convincing evidence that one of the exceptions set forth in the Convention applies.

(e) Full faith and credit shall be accorded by courts in the United States to the judgments of other courts in the United States ordering the return of a child pursuant to the Convention and this Act or denying such return.

(f) The remedies established by the Convention and this Act shall be in addition to remedies available under other laws or international agreements.

SEC. 103. PROVISIONAL REMEDIES.

(a) In furtherance of the objectives of the Convention and subject to the provisions of subsection (b), any court exercising jurisdiction over a petition filed pursuant to the Convention and this Act, may, either directly or through an appropriate intermediary, take or cause to be taken provisional measures under Federal or State law, as appropriate, to protect the well-being of a child or to prevent the child's further removal or concealment prior to final disposition of the petition.

(b) No court exercising jurisdiction over a petition filed pursuant to the convention and this Act may order a child provisionally removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

SEC. 104. ADMISSIBILITY OF DOCUMENTS.

Any application to the United States Central Authority or petition to a court submitted in accordance with the terms of the Convention, together with documents and any other information appended thereto or provided subsequently, shall be admissible in court without the need for any legalization or authentication.

SEC. 105. UNITED STATES CENTRAL AUTHORITY.

(a) The President shall designate a Federal agency to serve as Central Authority for the United States.

(b) The functions of the United States Central Authority and cooperating State and local authorities and agencies are those ascribed to the Central Authority by the Convention and this Act.

(c) The United States Central Authority shall have authority to issue regulations to implement the Convention and this Act.

(d) The United States Central Authority shall have authority to obtain information from the Federal Parent Locator Service under section 463 of part D of title IV of the Social Security Act.

SEC. 106. COSTS AND FEES.

(a) No Federal, State, or local authority shall impose on the applicant any fee in relation to the administrative processing of applications submitted under this Convention.

(b) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions and travel costs for the returning child and any accompanying persons, except as provided in subsection (c) or (d).

(c) Subject to subsection (d), legal fees or court costs incurred in connection with proceedings under the Convention or this Act shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(d) Any court ordering the return of a child under the Convention shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of return proceedings, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

SEC. 107. COLLECTION, MAINTENANCE AND DISSEMINATION OF INFORMATION.

(a) Notwithstanding section 522a of title 5, United States Code and any other provision of law, the United States Central Authority may, under such conditions as it prescribes by regulation, receive from or transmit to any Federal, State, or foreign authority or person information for purposes related to the Convention. No information shall be

disclosed by the United States Central Authority pursuant to this section, however, if such disclosure would contravene the national security or law enforcement interests of the United States or the confidentiality of census data.

(b) Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Notwithstanding any other provision of law (but subject to subsection (d)), whenever the head of any department, agency, or instrumentality of the United States or of any State, territory, or possession of the United States receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the United States Central Authority, except that if any information is obtained the disclosure of which would contravene national security or law enforcement interests of the United States or the confidentiality of census data, such

information shall not be transmitted. The responding agency shall be obligated to advise the United States Central Authority immediately upon completion of the requested search.

(d) To the extent that information the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Federal Parent Locator Service under the provisions of section 463 of the Social Security Act, such Central Authority shall use the procedure provided for under such section 463 in its efforts to obtain such information, and shall not request such information directly under the provisions of subsection (c) of this section.

(e) Nothing in this section shall be construed as permitting the United States Central Authority to obtain tax return information except as provided in section 6103 of the Internal Revenue Code of 1986 and section 453 of the Social Security Act.

(f) The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

SEC. 108. INTER-AGENCY COORDINATING GROUP.

(a) The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating

group to monitor operation of the Convention and to provide advice on its implementation. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the coordinating groups at rates not to exceed those authorized for Federal employees under title 5 of the United States Code.

(b) The interagency coordinating group shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App. I).

SEC. 109. AUTHORIZATION OF APPROPRIATION.

There are hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this Act.

TITLE II—AMENDMENTS TO OTHER LAWS

SEC. 201. AMENDMENT CONCERNING FEDERAL PARENT LOCATOR SERVICE.

Section 463 of the Social Security Act (42 U.S.C. 663) is amended—

(1) in subsection (b), by striking out "under this section" and inserting in lieu thereof "under subsection (a)"; and

(2) by adding at the end the following new subsection:

"(e) The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 105 of the International Child Abduction Act, under which the services of the Parent Locator Service established under section 453 shall be made available to such Central Authority for the purpose of determining the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of carrying out its responsibilities under that Act. The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

SEC. 202. AMENDMENT TO THE INTERNAL REVENUE CODE.

Subparagraph (B) of section 6103(l)(6) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(6)(B)) is amended by inserting before the period at the end thereof the following: "and for purposes of, and to the extent necessary in, locating individuals in connection with the abduction or wrongful restraint or retention of a child".

Senator DECONCINI. I want to thank Senator Dixon. First of all, Senator Dixon, yesterday some of your staff was kind enough to answer the phone in my office when we all went to a funeral of somebody. I want to personally thank you for that.

Second, I want to thank you for bringing this legislation to the fore for consideration and passage. Quite frankly, had it not been for you, I would not have been advised that we have sat here now for more than a year and have failed to implement some legislation to deal with this problem.

I understand you will chair these hearings for some of the witnesses. I yield to the distinguished senior Senator from Illinois, Mr. Dixon.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIXON. Thank you very much, Mr. Chairman. And thank you for this opportunity to speak in support of S. 1347, a bill sponsored by Senators Simon, Wallop, Cranston, Gore, Stennis, Exon, and myself.

This bill is a bill to implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction. I am pleased that the subcommittee has acted so quickly in calling this hearing, and I thank you for that.

Passage of this bill is long overdue. In the interests of time, Mr. Chairman. I ask that my full statement be printed in the record.

Senator DECONCINI. Without objection, it will be in the record.

Senator DIXON. I will now take just a couple of minutes to emphasize a few important points.

The magnitude of the problem of international parental child abduction is shocking. The State Department has recorded over 2,500 cases since 1975, but many experts believe the actual number is much greater.

Some think as many as 10,000 children have been abducted. Furthermore, these abductions are increasing at an alarming rate. Since May 1983, the number of cases known to the State Department has jumped 84 percent.

Last year in my own State of Illinois the number shot up 60 percent.

In 1980 the convention was adopted by unanimous vote of the 23 countries who participated in the negotiation of this agreement. It is currently in force in nine nations: Canada, the United Kingdom, France, Portugal, Switzerland, Hungary, Luxemberg, Australia, and Spain.

These countries account for 20 percent of the abductions each year. Six other countries—Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands, and Sweden—expect to become parties to the convention during the next 2 years. And they account for another 12 percent of the cases.

Therefore, within 2 years of U.S. ratification, a full third of these international abductions could be subject to the Hague Convention. If all 23 countries who negotiated the convention ratified it, approximately half of the cases every year would be covered.

Clearly, the benefits of U.S. ratification would be significant. On October 8 of last year, the Senate adopted the text of S. 1347 as an amendment to the State Department authorization bill, H.R. 1777.

Unfortunately, this provision was not retained in conference. Now the entire Congress must act quickly to pass this legislation. This will be an important first step in combating the problem of international parental child abduction.

However, it will not singlehandedly solve the problem. For example, it is unlikely the convention will ever be in force in every country of the world. Therefore I have introduced S. 2059, which makes international parental child abduction a Federal felony.

This will provide a necessary deterrent against abduction; allow the extradition of some abductors; strengthen the negotiating position of the State Department when pressing foreign governments to intervene in these cases; and send a strong message to the international community that the United States views international parental child abduction as a serious crime, and will not tolerate the kidnaping of its young citizens.

Finally, Mr. Chairman, I want to point out why it is important for Congress to act swiftly. If Congress can pass this implementing legislation by May 1, then the United States could formally ratify the convention, and it would be in force by August 1.

This would be in time to cover the usual annual surge of abductions at the end of summer.

For the sake of these American children, Mr. President, I believe it is time to act.

I want to thank the Chair for giving me this opportunity, and I will be delighted to be a poor substitute for his presence for the rest of this hearing.

[The prepared statement of Senator Dixon follows:]

TESTIMONY BY SENATOR ALAN J. DIXON

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO SPEAK IN SUPPORT OF S. 1347, THE IMPLEMENTING LEGISLATION FOR THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION. I AM PLEASED THAT THE SUBCOMMITTEE HAS ACTED SO QUICKLY IN CALLING THIS HEARING. I BELIEVE THAT PASSAGE OF THIS BILL IS LONG OVERDUE.

AS YOU KNOW MR. CHAIRMAN, THE VICTIMS OF INTERNATIONAL PARENTAL CHILD ABDUCTION ARE CHILDREN FROM EACH AND EVERY STATE OF THIS COUNTRY, WHO HAVE BEEN ABDUCTED BY ONE OF THEIR PARENTS AND TAKEN ACROSS INTERNATIONAL BORDERS. I FIRST BECAME AWARE OF THE MAGNITUDE OF THIS PROBLEM OVER TWO YEARS AGO. SINCE THEN I HAVE BEEN ACTIVELY INVOLVED IN TRYING TO ASSIST MANY PARENTS IN BRINGING THEIR CHILDREN HOME TO THE UNITED STATES. I MUST SAY THAT THESE CASES ARE HEART-WRENCHING.

IN ONE CASE THAT HAS RECEIVED MUCH ATTENTION, ONE OF MY CONSTITUENTS, PATRICIA ROUSH, HAD HER TWO DAUGHTERS ABDUCTED BY THEIR FATHER, WHO HAS A LONG CRIMINAL RECORD IN THIS COUNTRY AND A DOCUMENTED HISTORY OF MENTAL ILLNESS AND ALCOHOLISM. IN ANOTHER CASE, A MOTHER WAS TAKEN TO A MOTEL ROOM AND HELD AT KNIFE-POINT WHILE HER CHILDREN WERE ABDUCTED.

HOWEVER, THE PARENTS WHO LOSE THEIR CHILDREN ARE NOT THE ONLY VICTIMS. THE CHILDREN SUFFER AS WELL. CHILD PSYCHOLOGISTS FROM THE ILLINOIS STATE POLICE ASSERT THAT THE TRAUMA ASSOCIATED WITH AN ABDUCTION OF THIS KIND, AND THE SUBSEQUENT DEPRIVATION OF ONE PARENT'S LOVE IS ONE OF THE MOST HORRENDOUS FORMS OF CHILD ABUSE. IN ONE CASE, AN ABDUCTED CHILD WAS SPOTTED COVERED WITH FILTH, LIVING IN A DISGUSTING, MUD-FLOOR HOVEL IN MEXICO, BEING RAISED BY HIS FATHER, WHO IS WANTED FOR MURDER IN THIS COUNTRY.

HOLLY PLANELLS, WHO HAS SUBMITTED WRITTEN TESTIMONY FOR TODAY'S HEARING, WAS ALLOWED TO VISIT HER ABDUCTED SON, HUEY, IN JORDON. SHE FOUND HEUY'S LIVING CONDITIONS TO BE SUBSTANDARD AND FEARED FOR HIS HEALTH. YET, THE MOST TRAGIC CRUELTY TO BOTH MOTHER AND CHILD WAS THAT HOLLY WAS FORCED TO LEAVE JORDAN WITHOUT HUEY, WHILE HE BEGGED HER NOT TO LEAVE HIM.

OTHER CHILDREN ARE BRAINWASHED INTO HATING THEIR AMERICAN PARENT. THESE CHILDREN ARE TOLD THAT THE PARENT IN THIS COUNTRY HAS ABANDONED THEM, HATES THEM, NEVER WANTS TO SEE THEM OR SPEAK TO THEM AGAIN. FURTHERMORE, NOT ONLY ARE THESE CHILDREN CONFUSED AND DISORIENTED, LIVING IN A NEW CULTURE AND SPEAKING A DIFFERENT LANGUAGE, BUT THEY ARE TAUGHT TO HATE THEIR NATIVE COUNTRY, THE UNITED STATES.

MR. CHAIRMAN, IN THE LAST TWO YEARS, I HAVE HEARD FROM LITERALLY HUNDREDS OF PARENTS WITH CASES EVERY BIT AS TRAGIC AS THESE. NO ONE KNOWS FOR SURE HOW MANY PARENTS HAVE BEEN VICTIMIZED BY INTERNATIONAL PARENTAL CHILD ABDUCTION. OVER 2,500 CASES HAVE BEEN REPORTED TO THE STATE DEPARTMENT SINCE 1975, BUT MOST EXPERTS BELIEVE THAT THIS NUMBER IS LOW. WE SIMPLY DO NOT KNOW MANY CASES HAVE NOT BEEN REPORTED. SOME BELIEVE THERE MAY HAVE BEEN AS MANY AS 10,000 INTERNATIONALLY ABDUCTED CHILDREN.

EACH YEAR, 300 TO 400 NEW CASES ARE REPORTED, AND THE PROBLEM IS GETTING WORSE. ACCORDING TO STATE DEPARTMENT STATISTICS, THE TOTAL NUMBER OF CASES HAS JUMPED 84% SINCE MAY OF 1983. IN 1987 ALONE, THERE WAS A 60% INCREASE IN MY HOME STATE OF ILLINOIS.

ONCE THE CHILDREN ARE TAKEN FROM THIS COUNTRY, THEIR RIGHTFUL CUSTODIANS FACE THE NEARLY IMPOSSIBLE TASK OF RECOVERING THEM. CURRENTLY, A PARENT WHOSE CHILD HAS BEEN ABDUCTED TO A FOREIGN COUNTRY IN VIOLATION OF A VALID U.S.

CUSTODY DECREE, MUST ATTEMPT TO HAVE THAT DECREE RECOGNIZED BY THE FOREIGN COURT. THIS PROCESS IS COSTLY, TIME-CONSUMING AND FREQUENTLY REQUIRES THE RIGHTFUL CUSTODIAN TO BE SUBJECT TO A HEARING BY THE FOREIGN COURT ON THE MERITS OF THE CUSTODY CLAIM. IN VIRTUALLY EVERY CASE, THE COUNTRY TO WHICH THE CHILD IS ILLEGALLY TAKEN, WHETHER ALLY OR ENEMY, REFUSES TO HONOR THE DECISION OF AN AMERICAN COURT, AND RETURN THE CHILD. THE ABDUCTING PARENT IS SIMPLY AWARDED CUSTODY.

THEREFORE, A PERSON WHO LOSES A CUSTODY BATTLE IN THIS COUNTRY HAS AN ENORMOUS INCENTIVE TO ABDUCT THE CHILDREN AND TAKE THEM OUT OF THE U.S. THEN, THE ABDUCTOR CAN BE ALMOST CERTAIN THAT THEY WILL NOT BE FORCED TO RETURN THE CHILDREN TO THE AMERICAN PARENT.

THE HAGUE CONVENTION IS AN IMPORTANT FIRST STEP TO RECTIFY THIS PROBLEM. WHILE IT DOES NOT PROVIDE FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN CUSTODY DECREES, IT ESTABLISHES A SYSTEM OF ADMINISTRATIVE AND LEGAL PROCEDURES DESIGNED TO INSURE THE PROMPT RETURN OF CHILDREN WHO ARE WRONGFULLY REMOVED TO, OR RETAINED IN, A RATIFYING COUNTRY. THE COURTS IN THE COUNTRY TO WHICH THE CHILD HAS BEEN TAKEN ARE UNDER TREATY OBLIGATION TO RETURN THE CHILD TO THE COUNTRY FROM WHICH HE OR SHE WAS ABDUCTED. THE FOREIGN COURT MUST COMPLY WITHOUT CONDUCTING ANY PROCEEDINGS ON THE MERITS OF THE UNDERLYING CUSTODY CLAIMS. THUS, IT DENIES THE ABDUCTOR THE LEGAL ADVANTAGE CURRENTLY GAINED THROUGH INTERNATIONAL ABDUCTION.

IN 1980, THE CONVENTION WAS ADOPTED BY UNANIMOUS VOTE OF THE 23 COUNTRIES WHO PARTICIPATED IN THE NEGOTIATION OF THIS AGREEMENT, AND IS CURRENTLY IN FORCE IN 9 OF THESE NATIONS: CANADA, THE UNITED KINGDOM, FRANCE, PORTUGAL, SWITZERLAND, HUNGARY, LUXEMBURG, AUSTRALIA, AND SPAIN. REPORTEDLY, ONCE THE UNITED STATES FORMALLY RATIFIES THE HAGUE CONVENTION,

SEVERAL ADDITIONAL COUNTRIES ARE LIKELY TO FOLLOW. ACCORDING TO SECRETARY OF STATE GEORGE SHULTZ, NEARLY HALF OF ALL REPORTED PARENTAL KIDNAPPINGS IN THE LAST SEVERAL YEARS HAVE INVOLVED ABDUCTIONS TO COUNTRIES WHICH PARTICIPATED IN THE PREPARATION AND NEGOTIATION OF THE HAGUE CONVENTION. THEREFORE, IF ALL THE SIGNATORY NATIONS RATIFY THE CONVENTION, THE IMPACT WOULD BE IMPRESSIVE.

FURTHERMORE, BECAUSE THIS PROBLEM AFFECTS NEARLY EVERY NATION IN THE WORLD, I BELIEVE THAT ONCE THE CONVENTION IS WIDELY RATIFIED, ADDITIONAL NATIONS WILL BE ENCOURAGED TO ADOPT IT IN ORDER TO DETER THE ABDUCTION OF THEIR OWN CHILDREN.

ON OCTOBER 9, 1986, THE SENATE CONSENTED TO THE CONVENTION BY A VOTE OF 98-0. HOWEVER, THE UNITED STATES WILL NOT FORMALLY DEPOSIT ITS INSTRUMENT OF RATIFICATION UNTIL THIS IMPLEMENTING LEGISLATION IS PASSED. UNTIL THEN, NONE OF THE PROVISIONS OF THE HAGUE CONVENTION WILL PROTECT THE CHILDREN AND PARENTS OF OUR COUNTRY. FOR THAT REASON, I CANNOT OVER EMPHASIZE HOW IMPORTANT IT IS TO PASS THIS LEGISLATION AS SWIFTLY AS POSSIBLE.

AS YOU KNOW, THE SENATE HAS ALREADY PASSED THIS BILL ONCE AS AN AMENDMENT TO LAST YEAR'S FOREIGN RELATIONS AUTHORIZATION ACT.

THEREFORE, BY WORKING TOGETHER WITH OUR COLLEAGUES IN THE HOUSE, WE SHOULD BE ABLE TO PROVIDE THIS URGENTLY NEEDED LEGISLATION EARLY IN 1988. AT THE SAME TIME, THE STATE DEPARTMENT MUST CONTINUE TO ENCOURAGE RATIFICATION OF THE CONVENTION BY THE OTHER TWENTY-FIVE COUNTRIES WHICH PARTICIPATED IN THE NEGOTIATION.

WHILE THE HAGUE CONVENTION IS URGENTLY NEEDED, IT IS ONLY A FIRST STEP. IT IS NOT RETROACTIVE, AND WILL NOT HELP THE THOUSANDS PARENTS WHOSE CHILDREN HAVE ALREADY BEEN ABDUCTED.

IT IS UNLIKELY IT WILL EVER BE IN FORCE IN EVERY COUNTRY OF THE WORLD. THE COUNTRIES NOT RATIFYING THE CONVENTION WILL BECOME "SAFE HAVENS" FOR ABDUCTORS.

THEREFORE, WE MUST AGGRESSIVELY WORK TO RECOVER THESE YOUNG U.S. CITIZENS BEING HELD HOSTAGE IN COUNTRIES AROUND THE WORLD. THE STATE DEPARTMENT MUST CONTINUE TO PURSUE EVERY AVENUE AVAILABLE TO ASSIST PARENTS IN RECOVERING THEIR CHILDREN.

IN LIGHT OF THESE OTHER DIFFICULTIES, I HAVE INTRODUCED S. 2059, WHICH MAKES INTERNATIONAL PARENTAL CHILD ABDUCTION A FEDERAL FELONY. THIS WILL PROVIDE A NECESSARY DETERRENT AGAINST ABDUCTION, ALLOW EXTRADITION IN SOME CASES, AND STRENGTHEN THE NEGOTIATING POSITION OF THE STATE DEPARTMENT WHEN PRESSING FOREIGN GOVERNMENTS TO INTERVENE IN THESE CASES.

MR. CHAIRMAN, THE FIRST STEP TO CONTROLLING THESE TRAGIC ABDUCTIONS IS THE HAGUE CONVENTION. ADDITIONALLY, THE CONVENTION WILL PROVIDE NEW SOLUTIONS EVEN FOR PARENTS WHOSE CHILDREN HAVE ALREADY BEEN ABDUCTED. IN THE CASE OF ALAN HERSHEY, A NEW JERSEY FATHER WHOSE CHILD IS BEING HELD IN CZECHOSLOVAKIA, THE CZECH COURTS HAVE STATED THAT AS SOON AS THE HAGUE IS IMPLEMENTED IN THE UNITED STATES, ALAN HERSHEY'S DAUGHTER WILL BE SENT TO HIM FOR REGULAR VISITATIONS IN THE U.S.

EACH WEEK EIGHT MORE AMERICAN CHILDREN ARE ABDUCTED. THE HAGUE CONVENTION WILL PROVIDE NEW TOOLS AND NEW HOPE FOR AMERICAN PARENTS TRYING TO BRING THEIR CHILDREN HOME. I VIGOROUSLY URGE YOU TO SWIFTLY PASS THIS URGENTLY NEEDED LEGISLATION.

Senator DECONCINI. Senator, thank you very much for that testimony.

Did I understand that the text of 1347 was put on the continuing resolution?

Senator DIXON. Mr. Chairman, not on the continuing; on the State Department authorization bill.

Last year on the State Department authorization bill three amendments were accepted from this Senator. This bill, the principal sponsor of which is Senator Simon, who has been rather occupied, was one of the amendments.

The second amendment was my bill to make the abduction of these children a Federal felony of kidnaping, which is the law, incidentally, in a majority of the American States with respect to abduction from the jurisdiction of one State to another.

And third, a provision to provide $250,000 for a special desk at State to deal with all the embassies in the world on an individual basis to be on top of this situation.

Senator DECONCINI. And that was never signed into law, never passed?

Senator DIXON. All three were dropped in the conference because the distinguished chairman of the Judiciary Committee on the House side in particular felt that we ought to have hearings.

I respect that point of view, may I say.

The State Department has been very cooperative, and they have now developed a desk at State which deals with this problem. They have selected, as I understand it, in every embassy in the world, some individual person there that they can deal with on these problems.

So we will have some things to do. But this one, this particular bill, Mr. Chairman, I think the important thing is this, would solve about half the cases. And since the United Kingdom, the Federal Republic of Germany, Canada, and some of those countries are involved here, they're the biggies in the world at large; and so they're the ones that will be important.

Senator DECONCINI. Let me ask you one other question, just for my own education.

You said that if we pass this, then the convention would have to be ratified? We've already approved the convention.

Senator DIXON. Right. But this is the necessary legislation——

Senator DECONCINI. If this became law, then it's automatic that we're in compliance, and we're subject to the terms of the Hague Convention?

Senator DIXON. That's correct. It provides how we do it in our court system and so forth.

Senator DECONCINI. This is what is necessary to trigger our involvement?

Senator DIXON. That's right. This is the supportive legislation so we can functionally do this.

Senator DECONCINI. Do you know, Senator Dixon, offhand, did all these other countries have to have implementing legislation?

Senator DIXON. Well, I would presume that in most countries they would have to have implementing legislation in order to carry out the provisions of the Hague Convention in their separate jurisdictions.

As I have pointed out here, nine have already done so. Some of the others will be on board within the next year or so. Most of the 23 signatories, in short order, will be in compliance.

Senator DECONCINI. And lastly, does the administration have any objections to this?

Senator DIXON. Oh, no, my understanding is that the administration supports this.

Senator DECONCINI. Have they sent legislation up here?

Senator DIXON. Well, my understanding, and I have to confess that I am not completely aware of everything that transpired, but I think that Senator Simon, when he introduced this legislation—I am actually one of the principal cosponsors—did it at the urging of someone in the administration as a member of this committee.

Now that is my understanding, but I would have to say that I was not privy to the conversations, so what I tell you is essentially hearsay.

May I say, Mr. Chairman, there are people from State and others here who will of course I think indicate the support of the administration.

Senator DECONCINI. Thank you, Senator Dixon. I appreciate you and Senator Simon pushing this kind of legislation.

We have had other conventions that have passed that have hung around—one in particular comes to mind—over 100 years, and we have never implemented the legislation. I think it is very appropriate that we are doing this, and this is a very important piece of legislation.

I wish I could stay to listen to the testimony, but I will be glad to turn the gavel over to you.

Senator DIXON. I appreciate very much, and I know you were busy today, and you made a special hole in your schedule to do this, and I want you to know, I appreciate your accommodation very much.

Senator DECONCINI. Glad to do it, Senator.

Senator DIXON [presiding]. We will proceed with the hearing. I have a request to introduce into the record a statement from Senator Heflin, former distinguished Chief Justice of the Supreme Court of Alabama in support of this.

[The prepared statement of Senator Heflin follows:]

STATEMENT OF SENATOR HOWELL T. HEFLIN
BEFORE THE SUBCOMMITTEE ON COURTS
AND ADMINISTRATIVE PRACTICE
CONCERNING S. 1347

FEBRUARY 23, 1988

TODAY AS THE SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE HOLDS A HEARING ON S. 1347, I WOULD LIKE TO THANK SENATOR DECONCINI FOR AGREEING TO CHAIR THIS HEARING AND SENATOR DIXON FOR URGING HIS COLLEAGUES TO ACT ON THIS IMPORTANT LEGISLATION.

AS MOST OF YOU ARE AWARE THE SENATE PASSED THE HAGUE CONVENTION IN 1986, BUT HAS YET TO PASS THE IMPLEMENTING LEGISLATION. BY ENACTING S. 1347 WE WILL BE ABLE TO BRING INTO FORCE THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION AND TO BETTER SAFEGUARD CHILDREN FROM THE TRAUMATIC CONSEQUENCES OF INTERNATIONAL CHILD ABDUCTION. I HOPE THAT BY GETTING AN EARLY START IN 1988 CONGRESS WILL HAVE TIME TO PASS THIS MUCH NEEDED LEGISLATION.

S. 1347 WILL HELP SECURE THE PROMPT RETURN OF CHILDREN WHO HAVE BEEN WRONGFULLY REMOVED FROM OR RETAINED OUTSIDE OF THEIR COUNTRY OF HABITUAL RESIDENCE.

ONCE CONGRESS ENACTS S. 1347, THE UNITED STATES WILL HAVE NEW ADMINISTRATIVE AND JUDICIAL REMEDIES AVAILABLE TO SECURE THE RETURN OF WRONGFULLY RETAINED OR REMOVED CHILDREN. IT IS IMPORTANT TO NOTE THAT THE CONVENTION IS NOT INVOLVED IN SETTLING DISPUTES ABOUT LEGAL CUSTODY RIGHTS. ITS CHIEF OBJECTIVE IS TO RESTORE THE FACTUAL SITUATION THAT EXISTED PRIOR TO THE CHILD'S REMOVAL OR RETENTION. FURTHERMORE, AS A RESULT OF ITS SWIFT RETURN REMEDY, THE CONVENTION WILL HOPEFULLY ACT AS A DETERRENT TO PARENTS IN ILLEGALLY REMOVING OR RETAINING A CHILD.

THERE ARE LITERALLY HUNDREDS OF CASES IN WHICH AMERICAN CHILDREN HAVE BEEN ILLEGALLY REMOVED FROM THIS COUNTRY - THIS LEGISLATION WILL PLAY A ROLE IN BRINGING THESE CHILDREN HOME. OFTEN TIMES, AS A NATION, WE LOOK AT THE PROBLEMS FACING OUR CHILDREN AND THE FAMILY AND WISH THERE WAS SOMETHING WE COULD DO. THIS LEGISLATION PROVIDES US THE OPPORTUNITY TO SUPPORT THE STABILITY OF THE AMERICAN FAMILY. I HOPE THE CONGRESS WILL ACT TO IMPLEMENT THE HAGUE CONVENTION AND HELP REDUCE THE PROBLEM OF INTERNATIONAL CHILD ABDUCTION.

I WELCOME TODAY'S DISTINGUISHED PANEL OF WITNESSES AND AGAIN THANK MY COLLEAGUES FOR THEIR ASSISTANCE.

Senator DIXON. I want to thank you, Mr. Pfund and Mr. Jones, for your cooperation in appearing here.

I must say at the outset to all of you here that, as is the case with most Senators, we all have time constraints. I am going to be able to stay here until about 3:30, and if others are later here, and can go on, that is fine.

But I have to put you on notice that I will have to be departing then.

Mr. Pfund, were you going to proceed first? Mr. Peter H. Pfund, Assistant Legal Adviser for Private International Law at State, is that correct?

STATEMENTS OF A PANEL CONSISTING OF PETER H. PFUND, ASSISTANT LEGAL ADVISER FOR PRIVATE INTERNATIONAL LAW, DEPARTMENT OF STATE, AND KEVIN R. JONES, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY

Mr. PFUND. That is correct. Thank you very much, Senator Dixon.

I very much appreciate the scheduling of this hearing so early during the session, and the opportunity to testify on behalf of the State Department in support of early passage of S. 1347.

Congressional passage of S. 1347 will make possible U.S. ratification of the 1980 Hague Convention on Civil Aspects of International Child Abduction, pursuant to the advice and consent to ratification already given by the Senate on October 9, 1986.

We urge in particular that the bill be passed soon enough, that is, by May 1988, to permit us to deposit the U.S. instrument of ratification before the end of May so that the convention would enter into force for the United States on August 1.

That would mean that about one out of five cases of international abduction or wrongful retention arising for us in the annual surge toward the end of summer will be covered by the Hague Convention.

Our ratification in May may make possible the return of a number of those affected children to the United States before the end of 1988.

The original House counterpart bill, H.R. 2673, has been superseded by H.R. 3971, and H.R. 3972, which were introduced by Congressman Lantos on February 18. They contain primarily structural changes to the original bill.

These two bills, and two amendments to H.R. 3971 that Congressman Frank will be introducing, are acceptable to the State Department.

Until the Hague Convention enters into force for the United States, the Department will regrettably continue to be very limited in what it can do to help resolve the abduction to or the wrongful retention in foreign countries in custody-related disputes of children from the United States.

In considering the limits on what U.S. authorities can do in a foreign country, it is useful to bear in mind the limits to which foreign officials should be held in this country in their efforts to effect

the return to their country of children that may have been abducted to or are held in the United States.

The Hague Convention would establish a new treaty-governed procedure between the United States and other countries, parties to it, designed to effect the prompt return of abducted or wrongfully retained children.

We believe that it will give left-behind parents in the United States a powerful legal tool in their efforts promptly to regain custody of children wrongfully removed from the United States.

The convention provides for the establishment of national Central Authorities, in each party country, responsible for receiving and processing returned requests made pursuant to the convention.

Upon application by a left-behind parent to the Central Authority of the country where the child is believed to be located, and subject only to the conditions set out in the convention, and the extraordinary exceptions specified in it, an abducted child is to be promptly returned, essentially restoring the status quo before the abduction or retention took place.

The U.S. Central Authority would be located in the State Department and staffed by its Bureau of Consular Affairs. It will counsel left-behind parents in the United States on how best to seek the return of children to this country.

It will also receive and process requests for the return of children from the United States, and will arrange for the essential cooperation of State and local authorities, where such children are located.

Given the adversarial approach to matters of this kind in the United States, it seems likely that many return requests will need to be brought and decided in courts in this country.

About 1 out of 5 of the approximately 300 affected children from the United States that are abducted annually are taken to one of the nine countries parties to the convention.

We are informed that Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands, and Sweden expect to become parties to the convention during the next 2 years.

Their ratification would mean that in 2 years about one out of every three abductions from the United States would be covered by the Hague Convention.

Other countries will also become parties. Thus, many children facing abduction to these countries will be returned, and the convention should eventually become an effective deterrent to abductions involving those countries.

We need Federal legislation to be best able to meet our obligations under the convention with regard to children abducted to or retained in the United States. The administration-cleared bill before you, introduced and cosponsored by Senators Cranston, Dixon, Exon, Gore, Simon, Stennis, and Wallop as S. 1347, was prepared in draft form by the State Department in consultation with the Departments of Justice and Health and Human Services, but also in close consultation over several years with a study group of distinguished family law experts from the private legal sector. That group and the members of the Secretary of State's Advisory Committee on Private International Law believed that Federal legisla-

tion was needed smoothly to fit the convention into our legal system.

Unlike other countries that negotiated the Hague Convention, the United States has more than 50 different jurisdiction, and has parallel Federal and State court systems. This and other aspects of our legal system will confront left-behind parents wishing to invoke the convention here with problems they will not face in other countries. The legislation anticipates problems that such left-behind parents might encounter in the United States. In the absence of Federal legislation, those problems might be resolved only after costly litigation and appeals that would substantially delay action in many child-return requests, and would cast doubt on the viability of the convention. That in turn would detract from the convention's value as an effective deterrent to international child abductions.

Courts and various Federal and State agencies will necessarily be involved in the implementation of the treaty obligations of the United States vis-a-vis other countries parties to the convention. The legislation therefore seeks to set certain implementation standards in the interest of uniform interpretation and implementation of the convention throughout the United States. In addition to the Federal legislation designed to promote this end, the State Department submitted a very detailed analysis of the convention when the Senate Foreign Relations Committee was considering it. That legal analysis was published by State Department notice in the Federal Register of March 26, 1986, and by the Senate Committee on Foreign Relations in Executive Report 99-25. We recommend that this committee include a reference and citation to the analysis in its report to the full Senate.

The written testimony submitted to you earlier summarizes the purpose and operation of the major provisions of the bill. However, I should mention that since the administration cleared the draft of the International Child Abduction Act early in 1987, Executive Order 12612 on federalism was issued on October 26, 1987. The Executive order demonstrates a strong administration policy with regard to the appropriate relationship of the Federal Government and the State governments. As a result of that Executive order, best explained, perhaps, by the Department of Justice, the administration no longer favors concurrent original Federal court jurisdiction to hear return requests pursuant to the convention.

However, consistent with section 2 of article III of the Constitution, on the jurisdiction of Federal courts with regard to treaties made, and 28 U.S. Code 1331, the changed administration policy in connection with S. 1376 is limited to original Federal court jurisdiction to hear return requests under the Hague Convention.

The Department of State strongly urges that the House and Senate pass this legislation without delay so that the United States can ratify the Hague Convention.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pfund and his responses to written questions follow:]

WRITTEN TESTIMONY OF PETER H. PFUND

ASSISTANT LEGAL ADVISER FOR PRIVATE INTERNATIONAL LAW
DEPARTMENT OF STATE

I very much appreciate the scheduling of this hearing so early during this session and the opportunity to testify before this Committee on behalf of the State Department in support of early enactment of S. 1347. Congressional passage of this bill and its House equivalent -- originally H.R.2673, in its amended form as introduced by Congressman Lantos on February 18 -- will make it possible for the United States to ratify the 1980 Hague Convention on the Civil Aspects of International Child Abduction pursuant to the advice and consent given by the Senate on October 9, 1986.

Until the Hague Convention enters into force for the United States, the Department will continue to be very limited in what it can do to help resolve the abduction to, or wrongful retention in, foreign countries in custody-related disputes of children from the United States. The Hague Convention would establish a treaty-governed procedure for the prompt return of abducted or wrongfully retained children between the United States and other countries that are or become parties to the Convention. We believe that the Convention will arm left-behind parents in the United States with a powerful tool in their efforts promptly to regain custody of children that have been wrongfully removed from the United States.

In order to give left-behind parents a single official place to turn for help, the Convention provides for contracting states to establish a national Central Authority responsible for receiving and processing return requests made pursuant to the Convention. Upon application by a left-behind parent to the Central Authority of the country where the child is believed to be located, and subject only to the conditions and exceptions set out in the Convention, a wrongfully removed or retained child is to be promptly returned, thereby essentially restoring the status quo before the abduction or retention took place. The U.S. Central Authority, to be located in the State Department's Bureau of Consular Affairs, will be available to counsel left-behind parents in the United States on how best to seek the return of children from other countries party to the Convention. It will also receive and process requests for the return of children from the United States with the necessary cooperation of State and local authorities in the jurisdictions where such children are located in the United States.

The nine countries already parties to the Convention (Australia, Canada, France, Hungary, Luxembourg, Portugal, Spain, Switzerland and the UK) are countries to which one out of five or six of the approximately 300 children from the United States abducted or retained abroad annually are taken. We are informed that Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands and Sweden expect to become parties to the Convention during the next two years. Other

countries are expected to follow. There is thus reason for hope that the Convention will become a serious deterrent to the abduction of children to or from those countries. Moreover, a growing percentage of all abductions from the United States will be covered by the return obligation established by the Convention.

We need federal legislation to be able effectively to meet our obligations under the Convention with regard to children allegedly wrongfully removed to or retained in the United States. The Administration bill before you, introduced and co-sponsored by Senators Cranston, Dixon, Exon, Gore, Simon, Stennis and Wallop as S. 1347, was prepared by the State Department in consultation with the Departments of Justice and Health and Human Services, but also in close consultation over several years with a study group of distinguished family law experts from the private legal sector, including State officials, practicing lawyers, law professors and association representatives. These experts are familiar with the international child abduction problem, the provisions of the Hague Convention and relevant aspects of U.S. law and procedure. The bill seeks, on the one hand, to ensure that the US Central Authority, courts in the United States, and federal, State and local authorities are best able to use resources in this country to meet the requirements of the Convention in processing such return requests. On the other hand, it seeks to provide left-behind parents, i.e., parents whose children have been abducted or wrongfully retained, and their counsel guidance on how the Convention may be invoked in seeking the return of a child from the United States.

The Members of the Secretary of State's Advisory Committee on Private International Law, who represent eleven national legal organizations interested in the international unification of private law to facilitate international legal relationships and transactions, strongly believed that federal legislation was needed smoothly to fit the Convention into our legal system and procedures. We have sought in the legislation in particular to anticipate some of the problems that left-behind parents seeking the return of children from the United States pursuant to the Convention might encounter. In the absence of federal legislation, those problems might be resolved only after costly litigation and appeals that would delay action on many return requests arising in the first years after our ratification and would cast doubt on the viability of the Convention. That, in turn, would detract from early perception of the Convention as an effective deterrent to international child abductions. Unlike many other countries that participated in the negotiation of the Hague Convention, the United States is made up of more than fifty different

jurisdictions and has parallel federal and State court systems. This confronts left-behind parents abroad wishing to invoke the Convention with problems they do not face in other countries. Moreover, there will be considerable need for the U.S. Central Authority to rely on State and local authorities, for example to locate abducted children in the United States, in some cases to explore the possibility of their voluntary return, and to provide possible foster care for such children.

State procedures concerning notice of a return action to the alleged abducting or wrongfully retaining parent, and State requirements for determining whether a child is to be provisionally removed from a person having physical control over it while a return action is pending, will be applicable. The federal legislation seeks to intrude as little as possible on relevant aspects of State law and procedure. However, because courts and authorities will be involved in the implementation of treaty obligations of the United States vis-a-vis other countries parties to the Convention, the legislation seeks to set certain implementation standards in the interest of uniform interpretation and implementation of the Convention throughout the United States. The legislation is the second way in which we have sought to enhance the likelihood of such uniformity -- the first being the very detailed legal analysis of the Convention that was transmitted by the State Department to the Chairman of the Senate Committee on Foreign Relations in connection with that Committee's consideration of the Convention. That legal analysis was published by State Department notice in the Federal Register of March 26, 1986 at pages 10494-10516, and by the Senate Committee on Foreign Relations in Executive Report 99-25 on the Convention. We recommend that this Committee either make the legal analysis a part of the record of its consideration of S. 1347 or include a reference and citation to it on its report in order to promote awareness of it and to help ensure use of the legal analysis by the public, courts and authorities in the United States.

I would like now to turn to the specific provisions of the bill that may benefit from explanation.

Section 2. Findings and Declaration of Purposes.

This section states certain principles basic to the Convention and its implementation and describes in general terms the relationship of the Act to the Convention, the effective implementation of which the Act is designed to ensure and facilitate. Subsection (6) makes clear that the provisions of the legislation are in addition to those of the Convention

and are not designed to operate in their stead. Subsection (7) contains an admonition that the international character of the Convention is to be taken into consideration as is the need for uniformity in its interpretation. Subsection (8) makes clear that procedures undertaken by the courts under the Convention and the Act are not aimed at judging and deciding on the merits of conflicting custody claims that underlie the wrongful abduction or retention, and thus that such claims remain for resolution after the Convention procedures have been concluded.

TITLE I Provisions Implementing the Convention
Section 101. Definitions.

This section defines terms used in the Act and the Convention the interpretation of which is not self-explanatory in the context of the U.S. legal system. The definition of "court" in subsection (3), together with section 102(a) and (b), specifies that the courts of original jurisdiction to determine whether a child is to be ordered returned pursuant to the Convention are courts within the jurisdiction of which a child covered by the Convention is located at the time the return petition is filed. Subsection (11) specifies that wrongful removal or retention within the meaning of the Convention may include a removal or retention even when the child has not yet become the subject of a custody order, and notwithstanding that the law of the State or other U.S. jurisdiction in which the child is located may not make the taking or retention in such circumstances a felony or otherwise wrongful. Subsection (12) provides that the filing of a petition in accordance with section 102(b) of the Act shall constitute "commencement of the proceedings" within the meaning of article 12 of the Convention. Under article 12, so long as the commencement of proceedings takes place less than one year after the wrongful removal or retention, the judicial or administrative authority is to order the return of the child forthwith and without regard for any demonstration that the child may have become settled in its new environment.

Section 102. Administrative and Judicial Remedies.

Subsection (a) provides that Federal district courts and State, District of Columbia or territorial courts or courts in possessions of the United States have concurrent original jurisdiction to hear and decide cases brought before them pursuant to the Convention.

Subsection (b) concerning venue expressly provides that a person seeking relief under the Convention has a civil cause of action in a court in the jurisdiction of which the child is located at the time the petition is filed. Subsection (c) provides that notice of a return action under the Convention and the Act is to be given in accordance with the applicable State or other law governing notice in interstate child custody cases. This will provide necessary guidance for notice, for example when the return action is brought in the U.S. jurisdiction where the child is located and the respondent is located in another jurisdiction.

Subsection (d) makes clear that the courts are to order the prompt return of a child when the parent seeking its return under the Convention establishes by a preponderance of the evidence that the child has been wrongfully removed or retained within the meaning of the Convention. On the other hand, the respondent wishing to invoke one or more of the Convention's narrow exceptions to the return obligation must demonstrate, by clear and convincing evidence, that one of the exceptions provided by the Convention applies, i.e., the respondent must meet a higher burden of proof in order to provide the legal basis for a finding that the return obligation of the Convention does not apply because one of the Convention's exceptions is applicable and that the return of the child may be refused. This provision seeks to help the left-behind parent to overcome what is often a home-court advantage of the other parent in the country of that parent's origin -- an advantage that would in essence reward the abducting or wrongfully retaining parent for conduct harmful to the child. It is intended to ensure that the exceptions to the Convention's return obligation are sufficiently hard to demonstrate so that their interpretation and application does not become so broad as to provide a precedent in the United States that could undermine the purpose of the Convention and could have the effect abroad of providing a basis for refusal to return children to the United States.

Subsection (e) provides that full faith and credit shall be accorded throughout the United States to judgments and orders of courts in the United States rendered with regard to return actions pursuant to the Convention and the Act. This means, for example, that if a court in one jurisdiction has ordered the return of a child and the child is located in another jurisdiction in the United States before action on that return order has taken place, the order will be given full effect in the second jurisdiction without the need for the petitioning parent to initiate and maintain a new return action there pursuant to the Convention and the Act. It also means that if the return request has been denied, the court's decision will be recognized by courts in other jurisdictions. However, the

provision is not intended to deny the possibility of appeal from, or some other procedure to question, a return order or a decision denying a return order.

Subsection (f) makes clear that the remedies under the Convention and the Act are in addition to remedies otherwise available, and are not intended to replace or exclude other available remedies that exist or may be established under law in the United States (e.g., the Uniform Child Custody Jurisdiction Act (UCCJA)).

Section 103. Provisional Remedies.

This section provides that any court may take or cause to be taken provisional measures under State or Federal law, as appropriate, to protect the child from neglect or abuse or to prevent its removal from the jurisdiction or its concealment, while the petition filed pursuant to the Convention and this Act is pending. However, the requirements and standards of the law of the jurisdiction where the child is located concerning removal of a child from the physical custody of a person having such custody must be satisfied.

Section 104. Admissibility of Documents.

This section tracks the provisions and requirements of Articles 23 and 30 of the Hague Convention. Article 23 provides that no legalization or similar formality may be required in the context of the Convention. Article 30 requires that applications to Central Authorities or directly to judicial or administrative authorities, together with documents and any other information appended thereto or provided by a Central Authorities, be admissible in the courts or administrative authority of Contracting States. Section 104 seeks to ensure that an application for assistance addressed to the U.S. Central Authority and a petition to a court in an action pursuant to the Convention and the Act, and documents and information appended thereto, do not require costly and time-consuming legalization, or what we call authentication, to be admissible, which could result in undesirable delays in return of children. The purpose of Articles 23 and 30 of the Convention is to spare the left-behind parent the expense of formal procedures that are not essential in most cases. These Articles of the Convention and Section 104 do not address the question of the weight to be accorded to such documents and do not mean that if there is a specific allegation or reason to believe that supporting documents are false or have been altered, the authenticity of those documents cannot be questioned. They also do not mean that in such circumstances the court or other authority would be barred from requiring the submission of authenticated copies of the questioned documents and possibly other evidence to support their authenticity.

Section 105. U.S. Central Authority.

Subsection (a) provides for the establishment of the U.S. Central Authority in an existing Federal agency. Subsection (b) makes clear that the functions of the Central Authority ascribed to it by the Convention and the Act are to be carried out by the U.S. Central Authority with the necessary cooperation of State and local authorities and agencies on which the U.S. Central Authority will need to rely in the performance of these functions. These functions may include the provision of home studies for foreign authorities and courts considering a request for the return of an abducted child to the United States. The administrative burden on State and local authorities will be the complement to the benefits provided to left-behind parents in the United States by the return of children to those jurisdictions through operation of the Convention. Subsection (c) expressly authorizes the U.S. Central Authority to issue regulations in connection with the implementation of the Convention and the Act. Subsection (d) makes reference to authority for the U.S. Central Authority to make use of the services of the Federal Parent Locator Service (FPLS), which authority is provided in the Social Security Act as amended by Section 201 of this Act.

Section 106. Costs and Fees.

Subsection (a) ensures, consistent with the obligation in the first paragraph of Article 26 of the Convention, that none of the costs for the administrative processing of applications under the Convention are imposed on the applicant by the U.S. Central Authority, any Federal agency, or cooperating State or local authorities. Subsection (b) provides that petitioners may be required to bear the costs of legal counsel or advisers and court costs in connection with their petitions, and travel costs associated with the return of a child. This is consistent with the State Department's proposal that the United States ratify the Convention subject to a reservation, permitted by article 42, to be made by declaration at the time of ratification, that the United States will not be bound to assume any costs referred to in the second paragraph of article 26 resulting from the participation of legal counsel or advisers or from court proceedings. Senate advice and consent to U.S. ratification of the Convention, given on October 9, 1986, was made subject to the making of that reservation. Subsection (c) provides that legal fees and court costs not covered by Federal, State or local legal assistance or other programs are to be borne by the petitioner, but subject to subsection (d). Subsection (d), reflecting the provisions of

the last paragraph of article 26 of the Convention, provides that a court ordering the return of a child shall order the respondent to pay specified necessary expenses incurred by or on behalf of the petitioner unless the respondent establishes that to do so would be clearly inappropriate. This provision of the Act and the provisions of article 26 that it reflects were intended to provide an additional deterrent to wrongful international child removals and retentions.

Section 107. Collection, Maintenance and Dissemination of Information.

Subsection (a) provides for the exemption of the U.S. Central Authority, in pursuance of its functions under the Convention, from the application of Federal and State privacy legislation or regulations, in order to permit the Central Authority flexible use of information obtained related to the location or possible location of the alleged abducting parent and the abducted child, although subject to the stated exceptions with regard to national security or law enforcement interests or the confidentiality of census data. Subsection (b) permits the U.S. Central Authority by regulation to prescribe how and subject to what exceptions requests for information by left-behind parents abroad shall be submitted to it and what supporting documents may be required. Subsection (c) stipulates how and subject to what exceptions requests for information directly from the U.S. Central Authority will be handled and responded to by Federal agencies and organs of any State, territory or possession of the United States. Subsection (d) ensures that the U.S. Central Authority will make use of the services of the Federal Parent Locator Service (FPLS) when information that may be in the control of a Federal Agency can be obtained through the FPLS rather than by requesting such information directly. Subsection (e) provides that nothing in this section shall be construed as permitting the Central Authority directly to obtain tax return information except as provided in section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103) and section 453 of the Social Security Act (42 U.S.C. 653). Subsection (f) requires that the Central Authority maintain appropriate records concerning its functions and the disposition of cases arising under the Convention.

Section 108. Inter-Agency Coordinating Group.

This section provides for the establishment of a coordinating group to monitor operation of the Convention and provide advice on its implementation in the United States, that shall include representatives of the Departments of State,

Justice, and Health and Human Services, and that may also include private citizens. Such private citizens would be experts in family law and other aspects of law and procedure relevant to international child abductions. The coordinating group is to meet at the request of the U.S. Central Authority and is to be exempt from the Federal Advisory Committee Act.

Section 109. Authorization of Appropriation.

This section, as a precaution, authorizes the appropriation of such sums as may be necessary each fiscal year to carry out the purposes of the Convention and this Act. The purpose of this section is to provide for the contingency that funds may be needed. However, there is no intention to seek the appropriation of any funds for the foreseeable future because there is at present no reliable basis for determining the numbers of return requests arising under the Convention and the administrative costs involved at various levels in the processing of requests, which will vary from case to case and may vary from one U.S. jurisdiction to another. The necessary statistics and figures could be developed only after several years of implementation of the Convention.

TITLE II Amendments to Other Laws
Section 201. Amendment Concerning Federal Parent Locator Service.

This section ensures, by amending the provision of the Social Security Act establishing the Federal Parent Locator Service (FPLS) and the financial conditions for its use, that the services of the FPLS will be accessible to the U.S. Central Authority to provide information needed in connection with efforts to determine the whereabouts of any parent or child for the purposes of the Convention, and that no fee for use of the FPLS is charged against the Central Authority, the applicant or anyone else inconsistent with the first paragraph of article 26 of the Convention and section 106(a) of this Act.

Section 202. Amendment to the Internal Revenue Code of 1986.

This section makes a conforming amendment to section 6103(l)(6) of the Internal Revenue Code of 1986, to authorize the release of tax return information for purposes of, and to the extent necessary in, efforts to locate individuals in connection with the abduction or wrongful restraint or retention of a child.

The Department of State strongly urges that the House and Senate pass this bill without delay so that the United States will be able to ratify the Hague International Child Abduction Convention. We would, in particular, urge that the bill be passed soon enough to permit us to ratify so that the Convention's entry into force for the United States 2-3 months later will permit the usual annual surge of international abductions and retentions of children toward the end of summer to be covered by it when other countries party to the Convention are involved. Passage by both Houses of Congress of the requisite federal legislation by May, to permit deposit of the U.S. instrument of ratification before the end of May, would be necessary for the Convention to enter into force for the United states as of August 1. It would then be possible that a number of those children would be returned to the United States pursuant to the Convention by the end of 1988.

Responses to Written Questions

Questions Submitted by Senator Charles E. Grassley

Question 1:

"In what Department or Agency of the federal government does the State Department envision the "Central Authority", as described in S. 1347 'to be designated by the President', to be located?"

Answer:

In inter-agency consultations on U.S. implementation of the Hague Convention on the Civil Aspects of International Child Abduction, the State Department volunteered to assume the role of U.S. Central Authority under the Convention. Within the State Department responsibility would be delegated to the Bureau of Consular Affairs, which has been dealing with international child abductions for many years.

Question 2:

"Pages 2 and 3 of the Department's statement, explains that the United States is made up of more than 50 different jurisdictions, with parallel federal and state court systems, which is unlike many of the signatory nations to the Hague Convention.

The Department goes on to describe how there will be the need for the "Central Authority", to rely on state and local authorities; for example: to locate abducted children in the United States; to explore the possibility of their voluntary return; or to provide possible foster care for such children. Overall, I believe that this legislation is a worthwhile effort. However, it looks as though the treaty and this implementing legislation may cost the states and localities some extra revenue.

I think we ought to have some idea of how much the states and localities are going to have to spend to help enforce this treaty.

Please provide me with an estimate of the cost of this treaty to the states and localities."

Answer:

Although the Department cannot estimate the cost of U.S. implementation of the obligations of the Hague Convention with precision, we believe that such costs will be moderate and can be satisfied with current resources. As requests for the

return of children from the United States are now made to State courts and authorities, normally without the involvement or knowledge of the State Department, we have no reliable information on the number of such cases arising annually and involving the countries already parties to the Hague Convention.

The State Department plans to perform its role as Central Authority, at least initially, without additional personnel or other resources. It is believed that the 30-50 cases of petitions for the return of children from the United States likely to arise annually will not substantially add to the overall workload of the part of the Bureau of Consular Affairs that is to perform the function of Central Authority.

In a few cases, the State Department has provided general assistance in connection with requests for the return of children from the United States, particularly when countries already parties to the Hague Convention were involved that have been helpful in reversed circumstances. In all these cases, U.S. and local authorities were generous in assisting the foreign-based left-behind parent's efforts to obtain the return of such children. We have every reason to believe that the States and local authorities will continue to provide such assistance after the Convention enters into force for the United States, particularly since the Convention will be an important tool for parents in our country. The crucial willingness of the States and local authorities to cooperate with the U.S. Central Authority in the State Department to make the Convention work will be based on their interest in having their residents enjoy the benefits of the Convention. State representatives involved in our consultations with private sector family law experts have confirmed that we can rely on the cooperation of State and local authorities.

Section 109 of S.1347 would authorize to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and the Act. In the absence of specific data that would justify seeking any appropriation under the requested authority, the Department has no current plans to seek any appropriations. Moreover, it would strongly prefer not to become involved in funding the cooperation of State and local agencies to make the Convention work. However, the authority is sought as a precautionary measure in case the administrative burden on the State Department and/or State and local agencies should become so great as to require an appropriation to ensure that the United States can meet its obligations under the Convention.

Question 3:

"If the funds for the enforcement of this treaty are to be shared proportionately by the States and the federal government, who will determine this?"

Answer:

The paucity of relevant data and the uncertainty whether any appropriations will, in fact, be required, make detailed planning concerning possible sharing of appropriations between the Central Authority and State and local authorities impossible. If appropriations were to be sought, the justification concerning use and apportionment of funds would be provided in connection with justification for the appropriation.

Question 4:

"May the States ask the federal government to help them finance their treaty enforcement obligations?"

Answer:

The States may, of course, ask the federal government to help them finance some or all of the costs they incur in doing their share of the processing of petitions for the return of children located in their jurisdiction. However, unless and

until the State Department seeks and obtains funds under the authorization sought in Section 109 of S.1347, there will be no authority for those costs to be reimbursed to the States. The major costs will probably arise for them from efforts to locate children, and provide foster care for children when there is a possibility that they may be subject to abuse or further abduction while the return request for them is being processed. However, as the processing of the return request is to be expedited under the Hague Convention, the costs for foster care should not be very high. Moreover, Section 106 of the proposed legislation specifies that, if return should be ordered, the court ordering the child's return "shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of return proceedings, in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate." That means that the court could order the respondent to reimburse State and local authorities for such expenses.

Question 5:

"Page three of the Department's testimony explains that, 'the federal legislation seeks to intrude as little as possible on relevant aspects of State law and procedure.'

What impositions upon the jurisdiction of State courts, either broadening or narrowing, does the Department see resulting from enactment of S. 1347? (Please address the issue of concurrent versus exclusive jurisdiction over the subject matter of the Hague Convention -- including a discussion of the points raised in Thompson v. Thomspon, 108 S. Ct. 513 (1988) -- and the issue of which party should bear the burden of proof in a case arising under this legislation.)"

Answer:

In the absence of the Hague Convention, State courts in the United States are under no direct legal obligation to order the return of children that may have been abducted to, or be wrongfully retained in, their territory. Return could, of course, be sought under State law in compliance with the

custody order in favor of the other parent on the basis of comity, i.e., the voluntary deference accorded by courts to the decisions and decrees of foreign courts that is based on less than a legal obligation but is more than a mere courtesy. While the Uniform Child Custody Jurisdiction Act (UCCJA) is in force in all States of the United States, there is a provision (Section 23), enacted in almost all States, that requires State courts to enforce custody determinations made by appropriate authorities in foreign countries, provided that notice and opportunity to be heard were accorded to all parties -- a requirement not met in some cases. Moreover, the UCCJA is a recognition and enforcement statute requiring the existence of a custody order to be operative. Thus, it does not cover cases in which there is no custody order to enforce.

The Hague Convention makes the prompt return of a child a new and treaty-based obligation whether there is a custody decree or not if the petitioning parent seeking return establishes that the child was wrongfully taken or retained, and the respondent, if he or she should invoke one of the extraordinary exceptions to the return obligation provided for by the Convention, fails adequately to establish that a Convention exception to the return obligation is applicable. Just as the return obligation is imposed on US courts by the Hague Convention, the Convention imposes that obligation upon the courts and administrative authorities of other countries party to the Convention. It is that treaty obligation that promises, first, to return many children who would not have been returned if the Convention were not applicable, and second, to deter international child abductions.

Section 102(d) of the Act places upon the petitioning parent the burden of establishing by a preponderance of the evidence that the taking or retention of the child was wrongful

within the meaning of Article 3 of the Convention. The respondent can seek to establish by a preponderance of the evidence that the custody rights of the petitioning parent were not breached or that the parent was not actually exercising custody rights at the time of the removal or retention, and if successful would prevail, thereby removing the return obligation otherwise imposed by the Convention. However, if the respondent wishes to invoke, as an extraordinary matter, one of the exceptions to the return obligations of the Convention set out in Article 12, 13 or 20, the respondent can successfully overcome the return obligation of the Convention only if he or she establishes the applicability of one of the exceptions by clear and convincing evidence. This standard is intended to make clear that the exceptions are subject to a higher burden of proof and to ensure that the alleged abducting parent, who usually abducts the child to, or retains the child in, the country of his or her origin, is not rewarded for the abduction or retention harmful to the child by enjoying a home court advantage there. The provision seeks to make this point by using the specified burdens of proof familiar to American lawyers, thereby ensuring the implementation and interpretation of the Convention in a uniform manner throughout the United States that is consistent with the intent of its negotiators.

The considerations to explain the change in the Administration's position on exclusive State court jurisdiction were described in the testimony of the Justice Department witness at the February 23 hearing.

Question 6:

"What potential obstacles to meeting the obligations of a signatory to the Hague Convention has the Department considered in arriving at its position regarding reconciling the gathering of information under S. 1347 with the individual's right to privacy?"

Answer:

Article 7 of the Convention provides for cooperation by

Central Authorities of party countries with each other, and in particular, provides that they shall take all appropriate measures to discover the whereabouts of an abducted or retained child, to exchange information relating to the child's social background, and to provide information of a general character as to the law of their State in connection with the application of the Convention. Thus, the U.S. Central Authority will need, in addition to giving advice concerning the Convention to left-behind parents in the United States, to be able to pass information of U.S. origin to foreign Central Authorities and left-behind parents located abroad, and will need to be able to pass information of foreign origin that it receives to courts or attorneys in the United States. The information in question will include information about, or relevant to, the location of either the child or the alleged abducting parent, home studies concerning the home environment into which the child might be ordered returned, information about any possible criminal record of the petitioning parent or the absence thereof, and information or memoranda about law and the wrongfulness of the taking or retention on the basis of possible exceptions.

The federal agencies cooperating in the preparation of this legislation wished to ensure that neither federal nor State legislation would impose any bars to the U.S. Central Authority's ability to obtain and transmit documents and information pursuant to the Convention's obligations. It was therefore proposed to exempt the Central Authority from application of the federal Privacy Act and equivalent State legislation. However, in light of concerns that have arisen in consideration of the House equivalent of S.1347, alternative provisions to those of Section 107 of S.1347, have been found acceptable. The most far-reaching change, to be proposed by Congressman Barney Frank with regard to H.R.3971 (the revised version of title I of H.R.2673, introduced by Congressman

Lantos on February 18), would eliminate the Federal and State privacy act override by revising paragraphs (a) and (c) of the section that is Section 107 of S.1347, to read as follows:

"(a) IN GENERAL.--In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any Federal, State, or foreign authority or any applicant, petitioner, or respondent information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority--

(1) may receive such information from a Federal or State agency only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this Act.

(c) RESPONSIBILITY OF AGENCIES.--Whenever the head of any department or agency of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), such department or agency head shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, such department or agency

head shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which--

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of title 13, United States Code,

shall not be transmitted to the Central Authority. Such department or agency head shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State agency thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a)."

This new version of Section 107 would be acceptable to the State Department and will, we believe, permit the U.S. Central Authority effectively to perform its tasks under the Hague Convention, while meeting the concerns of those who are reluctant to exempt the operations of the Central Authority from the scope of existing federal and State privacy legislation.

Questions Submitted by Senator Alan J. Dixon

Question 1:

"S. 1347 exempts the Interagency Coordinating group from the Federal Advisory Committee Act. Could you explain why you believe this group should be exempted."

Answer:

The make-up and precise role of the inter-agency coordinating group is uncertain at this time. The original plans called for the possibility of including in the group a number of private sector legal and other experts on parental child abduction, who could provide expertise that might be useful to the U.S. Central Authority and federal agencies involved in the implementation and monitoring of implementation of the Convention and the International Child Abduction Act. It was not believed that any private sector member would have widely differing views concerning the Convention and the Act, and no economic or business interests would be involved. Meetings of the group involving its private sector members might be few and sporadic. For these reasons, it was thought desirable that the inter-agency coordinating group and its meetings not be subject to the requirements of the Federal Advisory Committee Act. However, application of that Act would be acceptable provided the inter-agency coordinating group were ultimately to include members from the private sector and not merely representatives of various federal government agencies.

Question 2:

"This legislation dispenses with the requirement that documents be authenticated before they are admissible in court. Could you explain the process that a parent seeking the return of a child would have to go through if authentication of documents were required."

Answer:

Section 104 of S.1347 provides for documents to be admissible even if they are not legalized or authenticated. This merely seeks to repeat in the act the requirements of Article 23 and 30 of the Hague Convention. Article 23 states

that no legalization or similar formality may be required in the context of the Convention. Article 30 provides that applications submitted to the Central Authorities or judicial or administrative authorities pursuant to the Convention, together with documents and other information appended thereto, shall be admissible in the courts or administrative authorities of the Contracting States.

Legalisation is the term of the Convention for which the American term is "authentication." An application to the U.S. Central Authority or a petition to a U.S. court for the return of a child from the United States, and documents and any other information appended thereto or provided by a Central Authority, are to exempted from legalisation, i.e. authentication, to be admissible in courts in the United States. Their certification by the Ministry of Foreign Affairs and their authentication by the Embassy of the United States in that country would not be necessary for the documents to be admissible in courts in the United States.

Similarly, by operation of article 23 and 30 of the Hague Convention, left-behind parents in the United States would not need to have documents certified or authenticated by the respective State Secretary of State, nor would authentication of those documents by the embassy or consulate of the country in which they are to be used be necessary. The Convention articles thereby spare left-behind parents in the United States the 2-3 extra time-consuming and expensive steps involved in authenticating documents that might otherwise be necessary.

Section 104 of S.1347 simply seeks to set out as U.S. law the combined effect of Articles 23 and 30 in this regard for the sake of uniformity in the interpretation of these provisions. Section 104 and Articles 23 and 30 of the Hague

Convention are concerned only with admissibility and not with the weight to be accorded to these documents, the authenticity of or information in which can be challenged by the respondent. Congressman Frank is proposing an amendment to section 5 of H.R. 3971 that would read as follows and that is acceptable to the Department of State:

SEC. 104. ADMISSIBILITY OF DOCUMENTS.

With respect to any application to the United States Central Authority, or any petition to a court, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

Questions Submitted by Senator Thurmond

Question 1:

Under conditions that now exist, what can the State Department do to secure the return of children abducted across international borders?

Answer:

While the Department of State sympathizes with the extreme distress a deprived parent experiences in such circumstances, we are not authorized by law to provide the sort of tangible assistance most parents desire. The U.S. government cannot cause an abducted child to be returned to the deprived parent. However, the Department has long been providing assistance including: 1) helping parents locate children known to be missing abroad; 2) monitoring and reporting on the welfare of children abroad; 3) attempting to establish communication between parents and children; 4) furnishing general information, short of legal advice, concerning foreign and domestic laws and procedures that might be of assistance in obtaining return of the child; 5) providing lists of foreign attorneys experienced in child custody matters; 6) coordinating with foreign authorities and monitoring foreign court proceedings to ensure that the rights of U.S. citizens under the laws of the foreign country are honored; 7) alerting local authorities or social service agencies if it appears that a child is being abused or neglected; 8) imposing passport controls in certain cases; and 9) utilizing diplomatic channels in cases where the rights of an American citizen parent appear to be unequal to the rights of nationals of the country where the child is located.

Generally, a custody decree issued by a court in the United States has no force or effect in a foreign country. Some countries have enforced U.S. custody decrees on the basis of comity when presented with evidence that the state of the child's habitual residence in the United States has enacted the

Uniform Child Custody Jurisdiction Act (UCCJA), including Article 23, -- the international clause. When a child is abducted by a parent, the deprived parent must usually initiate legal proceedings in the foreign country to regain custody of his or her child. The State Department can provide lists of English-speaking attorneys prepared by the American Embassy or Consulate in the country involved.

If there is an appropriate court order, entry of the child's name in the Department's passport name-check system can prevent the issuance of a U.S. passport in the United States on the basis of an application not in compliance with the order. Non-custodial parents and parents whose child has already been taken abroad can also be assisted in this regard, as the passport name-check system allows them to be informed if an application is made anywhere in the world for a passport for the child. If no court order is timely obtained, the child's passport will be issued but the notification will give the non-custodial parent information on the basis of which the parent may take whatever action is deemed appropriate.

If the abducting parent is not a U.S. citizen or is a dual national, it is possible that the child has a claim to that foreign nationality as well as U.S. citizenship. In such cases, the abducting parent and the child can travel abroad on foreign passports. There is nothing the Department of State can do to guarantee that embassies and consulates of foreign countries in the United States will not issue travel documents in child abduction cases. Some foreign embassies have honored U.S. custody awards when parents or their legal representatives have provided them a certified copy of the custody decree and requested that no foreign passport or visa be issued to the child.

U.S. passport controls can also be of assistance if the

abducting parent is a U.S. citizen who is the subject of a federal warrant. If abduction of the child by a parent is a felony in the local jurisdiction and a local warrant for the U.S. citizen abductor's arrest is issued, it may be possible for the local prosecutor to apply to the U.S. Attorney for the issuance of a federal Unlawful Flight to Avoid Prosecution (UFAP) warrant for the abductor's arrest under the federal Parental Kidnapping Prevention Act (PKPA). The U.S. Attorney or the F.B.I. can then contact the Department and request that the abductor's U.S. passport be revoked. This is a useful tool that may assist law enforcement authorities ultimately to recover the fugitive felon and often persuades the abducting parent voluntarily to return to the United States with the child to resolve the dispute. Even if the abductor is not a U.S. citizen, the existence of the federal warrant often serves to demonstrate to foreign authorities that the abduction of the child is considered a crime in the U.S. state in which the child is habitually resident, rather than a purely personal dispute.

If a state wishes to request the extradition of a fugitive parental child abductor, state authorities may contact the Department to ascertain if there is an extradition treaty between the United States and the country in question and whether the treaty covers the offense of parental child abduction. Even if the foreign country agrees to extradite the abductor, this does not, however, necessarily mean that the child will be returned to the aggrieved parent. It may still be necessary for the deprived parent to pursue the custody matter in the courts in the foreign country.

Once a child as been taken abroad by a parent, it is important for the deprived parent and his or her attorney to obtain custody decrees, court orders, or warrants provided for

under local law and to attempt to obtain a UFAP warrant under the federal PKPA. Such documents will help deprived parents and their American and foreign attorneys to persuade foreign authorities that the matter is not simply a family dispute, but involves a violation of civil and criminal law. These documents are also useful to the U.S. consular officer trying to obtain access to the child. If the abducting parent will not allow the U.S. consular officer to see the child, local authorities may be more inclined to intercede when presented with such evidence.

When a welfare/whereabouts inquiry is requested, the U.S. consular officer attempts to locate the abducted child and to ascertain his or her condition. In child custody cases the consular officer generally locates a child from specific information provided by the deprived parent regarding family ties, friends, or the possible place of employment of the abducting parent in the foreign country.

If the consular officer's efforts based upon such information are unavailing, the consular officer will ask local officials to verify the child's entry and/or residence in the country. Unfortunately not every country maintains such records in retrievable form. It is not always possible for the consular officer or local authorities to confirm the child's location without alerting the abducting parent to the search. The consular officer will not contact the abducting parent or his/her friends and relatives in the foreign country absent express consent by the parent in the United States. When such permission is granted, the consular officer will endeavor to interview the child personally or enlist the services of local authorities to determine the child's health and welfare.

Question 2:

"It is believed that implementation of the Hague Convention

will deter future child abductions. Could you describe how successful this agreement has been among the countries who are currently participating?"

Answer:

The Hague Convention has been in force for only a few years, initially entering into force between Canada, France and Portugal on December 1, 1983. It is now in force among eight countries that have ratified the Convention, and is in force between Hungary and the following countries that have accepted Hungary's accession to the Convention: France, the United Kingdom, Australia and Canada. There has therefore been little experience with operation of the Convention even in those countries that have been parties to it for several years, and their experiences vary somewhat from one party country to another.

On the basis of recent Department instructions to United States embassies in the nine countries and inquiries made to the Central Authorities of those countries, we believe that the following general statements can be made.

Several countries' Central Authorities rate the Convention as very effective to return children, others say it is quite effective, others still indicate that it is too early to make a judgment. While it appears that about 20 children have been ordered returned pursuant to the Convention, perhaps once again as many children have been returned pursuant to amicable agreements between parents that were encouraged by the existence or invocation of the Hague Convention. There seem to have been relatively few turn downs of return requests once the Convention was formally invoked.

The procedures under the Convention and the administration of return requests is considered by some Central Authorities more difficult than expected, and by others somewhat complex but feasible or about as expected.

The Central Authorities of five countries that consider themselves to have enough experience to have an opinion stated that they thought the Hague Convention was a positive deterrent to international child abductions although, of course, that can only be a general impression and is not capable of documentation.

A number of the Central Authorities were unable to provide specific figures concerning average numbers of abductions to the United States annually. However, it appears that the Department's estimate of 30-50 abductions to/wrongful retentions in the United States per year involving the nine countries for which the Convention is in force may be somewhat high rather than too low. It is, of course, possible that the entry into force of the Convention for the United States will result in the making of return requests under the Convention that would not, in its absence, have been brought to the attention of the State Department or the government of the country of the child's habitual residence. Moreover, the Convention's entry into force for the United States will result in better information about abductions of children to the United States or their retention here. While there may be an initial increase in the number of such cases, successful operation of the Convention to effect the return of such children from the United States and appropriate publicity to such cases should result in increased effectiveness of the Convention as a deterrent and a consequent eventual decrease in their numbers.

Senator DIXON. I want to thank you very much, Mr. Pfund. The distinguished senior Senator from Iowa, Senator Grassley, is here. He has given me a statement that will be placed in the record, and he has indicated that he will be asking written questions of the witnesses. I would appreciate it if you would accommodate Senator Grassley in respect to his request for responses to his questions, and we thank him for his attendance.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY
ON THE INTERNATIONAL CHILD ABDUCTION ACT
S. 1347

MR. CHAIRMAN, I WOULD LIKE TO THANK YOU AND THE CHAIRMAN OF THE FULL COMMITTEE, SENATOR BIDEN, FOR HOLDING THIS HEARING. THIS BILL WOULD IMPLEMENT THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION. THE CONVENTION HAS BEEN RATIFIED BY THE UNITED STATES, CANADA, FRANCE, PORTUGAL, SWITZERLAND, HUNGARY, GREAT BRITAIN, LUXEMBOURG, AND AUSTRALIA.

AS I HOPE WE ARE ALL AWARE, THE 1980 CONVENTION ADDRESSES THE ISSUE OF CHILDREN WHO ARE ABDUCTED FROM A RIGHTFUL CUSTODIAN AND TRANSPORTED ACROSS INTERNATIONAL BORDERS.

THE UNITED STATES STATE DEPARTMENT ESTIMATES THAT APPROXIMATELY 300 TO 350 NEW CASES OF INTERNATIONAL CHILD ABDUCTION ARE REPORTED EACH YEAR. ONCE A CHILD IS REMOVED FROM A COUNTRY, A RIGHTFUL CUSTODIAN FACES AN ALMOST IMPOSSIBLE TASK IN ATTEMPTING TO RECOVER THE ABDUCTED CHILD. NATURALLY, THESE SITUATIONS ARE FROUGHT WITH EMOTIONAL AND PSYCHOLOGICAL SCARS FOR BOTH THE WRONGFULLY ABDUCTED CHILD AND THE RIGHTFUL CUSTODIAN.

THE CONVENTION IS AN ATTEMPT BY THE SIGNATORY NATIONS TO SOLVE THIS PROBLEM BY ELIMINATING THE INCENTIVES TO ABDUCT CHILDREN. THESE INCENTIVES ARE ELIMINATED BY REQUIRING THE SIGNATORY NATIONS TO RETURN A WRONFULLY ABDUCTED CHILD TO THE NATION OF HABITUAL RESIDENCE AND TO THE CUSTODY OF THE RIGHTFUL CUSTODIAN. AN EXCEPTION IS PROVIDED WHERE A JUDGE FINDS THAT RETURN OF THE CHILD WOULD POSE A GRAVE RISK TO THE CHILD'S WELL-BEING.

THE CONVENTION IS NOT AN ATTEMPT TO CONTRAVENE THE DECISIONS OF LOCAL COURTS, WHO MUST REMAIN THE ULTIMATE ARBITERS OF WHO SHOULD HAVE THE RIGHTFUL CUSTODY OF A MINOR CHILD. IN MAINTAINING THIS STANDARD, S. 1347 KEEPS CHILD CUSTODY DECISIONS WITHIN THE AUTHORITY OF LOCAL, QUALIFIED, DISPASSIONATE JUDICIAL OFFICERS -- NOT OF THOSE WHO MAY ACT UNILATERALLY TO ABDUCT A CHILD.

UNDER THE PROVISIONS IN S. 1347, ONE FEDERAL AGENCY, DESIGNATED BY THE PRESIDENT, WILL COORDINATE THE GATHERING OF INFORMATION ON THE WHEREABOUTS AND WELFARE OF ABDUCTED CHILDREN. WHENEVER POSSIBLE, THE AGENCY WILL ALSO FACILITATE THE RETURN OF THESE CHILDREN TO THEIR RIGHTFUL CUSTODIANS.

IN ADDITION, THE BILL GRANTS CONCURRENT JURISDICTION TO STATE AND FEDERAL COURTS TO RULE ON ACTIONS ARISING UNDER THE CONVENTION.

THE CONVENTION AND ITS IMPLEMENTING LEGISLATION ARE THE NEXT LOGICAL STEPS AFTER THE ONE TAKEN BY THE CONGRESS IN 1980, WITH ITS ENACTMENT OF THE PARENTAL KIDNAPPING PREVENTION ACT AND THE ENACTMENT BY ALL FIFTY STATES OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT. AS THESE DOMESTIC MEASURES HELPED TO PREVENT ABDUCTIONS AMONG THE SEVERAL STATES, S. 1347 WILL HELP TO PREVENT ABDUCTIONS AMONG THE SIGNATORY NATIONS TO THE HAGUE CONVENTION.

WE CAN ALL HOPE THAT ALL OF THESE MEASURES HAVE ASSISTED AND, IN THE FUTURE, WILL ASSIST, EFFORTS TO CURB THE DISRUPTION AND EMOTIONAL HARM THESE KINDS OF ABDUCTIONS CAUSE INNOCENT CHILDREN AND THEIR FAMILIES.

THANK YOU, MR. CHAIRMAN. I LOOK FORWARD TO THE TESTIMONY OF OUR WITNESSES.

Senator DIXON. I want to thank you, Mr. Pfund, for being kind enough to limit your remarks within the 10-minute period that we are trying to respect here, and we are delighted to recognize Mr. Kevin Jones, Deputy Assistant Attorney General for legal policy in the Department of Justice.

STATEMENT OF KEVIN R. JONES

Mr. JONES. Senator Dixon, thank you very much. I am happy to be here to express the strong support of the Department of Justice of the purpose of this bill, which is necessary to implement the laudable objectives of the 1980 Hague Convention.

As Mr. Pfund mentioned, however, the administration, after considerable reflection, has changed its perspective with respect to the desirability of Federal court jurisdiction to enforce the provisions of the convention.

Our view is that the bill should be amended to provide that actions under the act should be heard only in the State courts, subject of course to review by the Supreme Court as to questions of Federal law.

A grant of Federal jurisdiction would represent a sharp departure from the longstanding policy, based on principles of federalism, of excluding domestic relations matters from the Federal courts, and leaving the resolution of those sensitive issues entirely to the courts of the States.

That exception rests on the principle, in the Supreme Court's words, that "the whole subject of domestic relations, of husband and wife, parent and child, belongs to the law of the states."

Even when a Federal question is presented, the courts have declined to hear disputes that would involve them deeply in resolving domestic relations disputes.

Similarly, when Congress enacted the Parental Kidnapping Prevention Act of 1980 to address interstate child abductions, Congress did not create a private cause of action in the Federal courts to enforce the provisions of the act, but left it to the State courts to enforce the act's standards, subject to review by the Supreme Court under full faith and credit principles.

As the Supreme Court stated in unanimously affirming this interpretation, "instructing the Federal courts to play Solomon where two States have issued conflicting custody orders would entangle them in traditional State law questions that they have little expertise to resolve."

The fact that the questions are embodied in Federal law, the Parental Kidnapping Prevention Act, does not render them any less as traditional State law questions.

The Supreme Court specifically rejected the argument that determining which State has proper jurisdiction over the child under the PKPA would not require resolution of the underlying custody disputes. It noted that under the act jurisdiction could turn on the best interests of the child, or whether the child has been abandoned or abused. In fact, the Court said:

> It would seem that the jurisdictional disputes that are sufficiently complicated to have provoked conflicting State court holdings are the most likely to resolve resolution of these traditional domestic relations inquiries.

Just as with the PKPA, our view is that the 1980 Hague Convention, and S. 1347, would similarly require courts to consider traditional domestic relations inquiries. The exceptions to the return obligations, for example, may be narrow, but they turn on questions such as whether the child is now settled in its new environment; whether the left behind parent was not exercising rights of custody, or had acquiesced in the removal; whether there is grave risk that his or her return would expose the child to physical or psychological harm; whether the child has attained the age and degree of maturity at which it is appropriate to take into account its views; and whether any other custody determinations have been rendered in the courts of the requested country.

These are all questions that go to the heart of traditional domestic relations matters. The fact that in this case the standards are based on the convention, and not directly on State law, does not alter the fact that these inquiries are of a character not handled by the Federal courts, just as Congress and the Supreme Court recognized that the similar Federal standards under the PKPA were also in the nature of traditional domestic relations inquiries, best handled exclusively by the Federal courts.

In fact, our view is that the provisions of S. 1347, and the corresponding House bill, would indeed require deep intertwining of the Federal courts into traditional State law matters, such as the custody of the child in provisional circumstances, foster care, et cetera, as explained in my statement.

Finally, the convention also provides for actions to make arrangements for organizing or securing the effective exercise of rights of access. We see no justification, and have heard none, of why the Federal courts should be given original jurisdiction of such actions, to determine that visitation rights exist under the laws of either the United States or another country, and if so, to secure such rights of access.

Let me take a few moments to respond to some of the other arguments in support of Federal court jurisdiction.

First it is argued that Federal courts have a superior ability to deal with matters of treaty interpretation. That is not a persuasive argument in this context, however, because as I said before, although the legal standards are set forth in the treaty, the substantive concepts and principles are much more akin to the kinds of considerations that the State courts have traditionally handled. And indeed, the State courts for example have handled issues of property and reciprocal rights in probate cases that are the subject of various international agreements. With respect to international child custody disputes in particular, the State courts have already had experience under section 23 of the Uniform Child Custody Jurisdiction Act in interpreting and enforcing foreign custody orders.

Second, there is the argument that concurrent State and Federal jurisdiction is needed to promote uniformity of interpretation of this legislation. Quite to the contrary, however, concurrent jurisdiction would more likely be disruptive, and lead to conflicts between State and Federal courts. It would increase the number of courts to which claims under the act could be brought without providing any additional means for uniformity. Each plaintiff would have the choice of a Federal or State forum, yet the Federal courts and the

State courts, even in the same State, would not be able to render interpretations of the convention and act that are binding on the other. Even if a Federal court of appeals had resolved questions as to a certain circuit, the State courts in that circuit would not be bound by the judgment, nor would the judges of the Federal courts be bound by any decision of the State courts.

This may lead to considerable confusion, as well as the possibility of forum shopping.

As always, of course, the Supreme Court is available to resolve such conflicting judgments among the lower courts. However, we are afraid that vesting jurisdiction not only in the State courts, but in the 94 Federal district courts as well, will simply provide additional means for conflict, without providing any means of uniformity.

Third, there is the argument that Federal jurisdiction is appropriate because the court would simply be interpreting a treaty, and would not be required to resolve questions relating to the circumstances of the child. That does not appear to be a fair characterization of the obligations of the court, because many of the determinations as discussed above would be fact-specific and turn on the circumstances of the child. The fact that the standards are codified in the convention, again, does not change the fact that the principles expressed in them are akin to traditional domestic relations matters.

Finally, there is the argument that the Constitution, and section 1331 of title 28, automatically provide jurisdiction for all questions arising under treaties. Although time does not permit a complete discussion of the legal complexities, it is sufficient to say that that argument is not entirely correct. Even apart from the question of whether treaties confer enforceable rights on individuals, the Federal courts have jurisdiction only in those cases provided by Congress. The mere fact that Congress has enacted a Federal law, or set forth Federal standards, or has ratified a treaty, does not confer jurisdiction necessarily on the Federal courts if Congress provides otherwise. The Parental Kidnapping Prevention Act is a very recent example of that. And there are other examples, such as international agreements concerning probate matters, which are routinely interpreted by State courts.

Finally I note that there is nothing in the convention that requires Federal court jurisdiction of cases under the act. Article 41 specifically reserves the right of countries with Federal systems of government to determine the internal distribution of power within those countries.

Accordingly, we recommend that the bill be amended to eliminate the jurisdiction of the Federal courts under the convention in the bill.

With your permission, Senator Dixon, I would like to address two other related questions on the question of the Privacy Act waiver and the right of the central authority to receive information.

My written statement discusses questions concerning the laws of the States, and the law enforcement interests that States may have in declining to provide information to the central authority. We have language that we would be pleased to submit to you that would ensure that the States would be able to invoke their own law

enforcement interests, should that be necessary in declining to provide to the central authority, just as the bill provides that the United States may do.

And second, in order to most narrowly tailor this Privacy Act override to the purposes of the convention, we would suggest that the override, I believe it is found in section 107(c), be limited to information that is necessary to locate a parent or child under the convention, as opposed to the more general language that is now used in the bill.

With respect to the other issues raised by the bill, I would defer to the State Department which has taken the lead on the substantive matters of this.

In conclusion, we hope that these matters can be resolved promptly, and that the statute can be enacted promptly in order to effectuate the high purposes of the convention.

Thank you, Senator Dixon.

[The prepared statement of Mr. Jones and his responses to written questions follow:]

Department of Justice

STATEMENT

OF

KEVIN R. JONES
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY

BEFORE THE

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

S. 1347 - INTERNATIONAL CHILD ABDUCTION ACT

FEBRUARY 24, 1988

Mr. Chairman and members of the Subcommittee:

I am pleased to appear before you to present the views of the Department of Justice with respect to S. 1347, the "International Child Abduction Act." The bill is intended to facilitate implementation in the United States of the 1980 Hague Convention on the Civil Aspects of International Abduction. That Convention addresses the issue of international abductions of children in custody-related disputes and requires the prompt return of children who have been wrongfully removed from or retained outside of their country of habitual residence. The objective of the Convention is to restore promptly the situation that existed before the child's removal or retention in order to deny the abductor any legal advantage in the country to which the child has been wrongfully removed or retained. The Convention establishes a legal right and streamlined procedures to effect the prompt return of internationally abducted children to the country of their habitual residence where any custody disputes can be heard or settled. The Convention also seeks to facilitate visitation rights across international borders.

Although the Department strongly supports the bill as implementing the laudable objectives of the Convention, we cannot support the bill's establishment of concurrent jurisdiction in the state and federal courts to hear claims under the Convention and the bill. In this respect, the bill represents a sharp departure from the longstanding policy, based on principles of

federalism, of excluding domestic relations matters from the federal courts and leaving the resolution of those sensitive issues entirely to the courts of the states. Our position is also consistent with the President's Executive Order 12612 issued last fall on federalism, which supports allowing states the "maximum administrative discretion possible" in the administration of national policy. 1/

For example, the diversity jurisdiction of the federal courts has, for well over a century, been interpreted to exclude domestic relations matters. 2/ That exception rests on the principle, in the Supreme Court's words, that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states." 3/ Even when a federal question is presented, the courts have declined to hear disputes that would deeply involve them in resolving domestic relations disputes. 4/

1/ Exec. Order 12612, § 3(c), reprinted in 52 Fed. Reg. 41685 (1987).

2/ E.g., In re Burrus, 136 U.S. 586, 593-94 (1890); Barber v. Barber, 62 U.S. (21 How.) 582 (1859).

3/ In re Burrus, supra, 136 U.S. at 593-94.

4/ See Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), aff'd, 56 U.S.L.W. 4055 (U.S. Jan. 12, 1988); Firestone v. Cleveland Trust Co., 654 F.2d 1212, 1215 (6th Cir. 1981); Bergstrom v. Bergstrom, 623 F.2d 517, 520 (8th Cir. 1980).

Similarly, when it enacted the Parental Kidnapping Prevention Act of 1980 (the "PKPA") to address the issue of interstate abductions of children in custody-related disputes, Congress did not create a private cause of action in the federal courts to enforce the Act, but left it to the state courts to enforce the Act's standards, subject to review by the Supreme Court under Full Faith and Credit principles. As the Supreme Court stated in unanimously affirming this interpretation of the Act last month, "instructing the federal courts to play Solomon where two states have issued conflicting custody orders would entangle them in traditional state-law questions that they have little expertise to resolve." 5/

The Supreme Court rejected the argument that determining which of two conflicting custody decrees should be given effect would not require resolution of the underlying custody disputes and thus not offend the longstanding reservation of domestic relations law to the states. It noted that, under the Act, jurisdiction could turn on the "best interest" of the child or whether the child had been abandoned or abused. "In fact," the Court found, "it would seem that the jurisdictional disputes that are sufficiently complicated as to have provoked conflicting state-court holdings are the most likely to require resolution of these traditional domestic relations inquiries." 6/

5/ Thompson v. Thompson, 56 U.S.L.W. 4055, 4059 (U.S. Jan. 12, 1988).

6/ Id. n.4.

Establishing concurrent jurisdiction in the federal courts of claims under the 1980 Hague Convention and the bill would similarly enmesh them in the types of domestic relations matters that federal courts have never handled. For instance, under the Convention, if the proceeding for return of a child is brought a year or more after a wrongful removal or retention, return is not required if the "child is now settled in its new environment" (Article 12). Similarly, return is not required if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (Article 13). Moreover, return may be refused if the child objects and "has attained the age and degree of maturity at which it is appropriate to take account of its views" (Article 13), or if it "would not be permitted by this fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms" (Article 20).

These are all questions that go to the heart of traditional domestic relations matters. The fact that in this case the standards are based on the Convention, and not directly on state law, does not alter the fact that these inquiries are of the character never handled by federal courts, just as Congress and the Supreme Court recognized that the similar federal standards under the Parental Kidnapping Prevention Act were also in the

nature of traditional domestic relations inquiries best handled exclusively by the state courts.

In fact, the provisions of S. 1347, implementing the 1980 Hague Convention, are even more inextricably intertwined with traditional state law matters than was the PKPA. Under section 103 of the bill, federal courts would be authorized "to take . . . provisional measures under Federal or State law, as appropriate, to protect the well-being of a child or to prevent the child's further removal or concealment prior to final disposition of the petition." The bill forbids the provisional removal of a child from his or her custodian "unless the applicable requirements of state law are satisfied," deeply enmeshing the federal courts in state domestic relations law. Further, it appears that to effect such provisional remedies as temporary foster care, the federal courts would be required to make arrangements with state and local authorities, entangling the federal courts in the state and local government agencies and procedures regulating domestic relations.

Apart from our concern over the intrusion of the federal courts into a traditional state preserve, we are also concerned about the potential increased burden on the federal courts. At a time when many district courts face intolerable backlogs, it would be inappropriate to add to their caseload without a compelling reason. We do not believe that there is justification

for burdening the federal courts with claims under the Convention and the bill. As I have explained, the federal courts can bring no peculiar expertise to bear on these questions that state courts have historically handled and, in fact, the state courts are far better suited for them.

Of course, the elimination of concurrent original jurisdiction in the federal district courts would still permit the Supreme Court, under 28 U.S.C. § 1257, to review state court interpretations of the federal standards established by the Convention.

Accordingly, we recommend that the bill be amended to eliminate the concurrent jurisdiction of the federal courts over matters under the Convention and the bill.

S. 1347 also would empower the Central Authority established by the bill to receive and transmit information, notwithstanding the Privacy Act, 5 U.S.C. § 552a, for purposes related to the Convention. The Central Authority may not, however, disclose, and agencies are not required to transmit to the Central Authority, information the disclosure of which would contravene the national security or law enforcement interests of the United States or the confidentiality of census data. To clarify that the law enforcement interests of the United States include the enforcement of state criminal laws, it would be desirable to

amend the phrase "national security or law enforcement interests of the United States" in section 107(a) and (c) to read "national security interests of the United States or law enforcement interests of the United States or the States".

With respect to other policy issues raised by the bill, including the burden of proof requirements of section 102(d), and the evidentiary provisions of section 104, the Department would defer to the Department of State.

I would be happy to answer any questions.

RESPONSES TO WRITTEN QUESTIONS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

31 March 1988

Honorable Howell Heflin
Chairman
Subcommittee on Courts and
Administrative Practice
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to the written questions submitted by the subcommittee with respect to the recent testimony of Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, concerning S. 1347, the International Child Abduction Act.

Three separate sets of questions were submitted by Senators Dixon, Thurmond, and Grassley. The following responds to those questions directed to the Justice Department. As Mr. Jones stated in his written testimony, with respect to most policy matters under the bill, we would defer to the State Department.

QUESTIONS OF SENATOR THURMOND

Q. *This legislation provides for concurrent jurisdiction in state and federal courts. There is some concern among federal judges that a grant of concurrent jurisdiction will embroil them in contested custody cases - disputes best left to the state family courts to resolve. Do you believe such concerns are justified?*

A. Yes. While the Convention does not purport to allow judges hearing return requests to examine the merits of any underlying custody order, we think that custody-related issues inevitably will arise. For example, while the exceptions to the return obligation may be narrow, they turn on questions such as whether the "child is now settled in its new environment" (Article 12), whether the left-behind parent was not exercising rights of custody or had acquiesced in the removal, whether

"there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (Article 13), whether the child "has attained the age and degree of maturity at which it is appropriate to take account of its views" (Article 13), and whether any custody determinations had been rendered in the country receiving the request (Article 17). In addition, the Convention provides for actions to "make arrangements for organizing or securing the effective exercise of rights of access."

These are all the types of issues that appear with some regularity in custody disputes and that go to the heart of traditional domestic relations matters that the state family courts have always handled.

Moreover, Article 17 seems to contemplate that courts will occasionally be faced with conflicting custody orders. Article 17 provides that the existence of a custody order in the country receiving the return request shall not, in and of itself, be grounds for denying the request, but that "the judicial or administrative authorities of the requested State may take account of the reasons for that [custody] decision in applying the Convention." The evaluation of such a conflicting custody decree under the Convention's standards most likely would, as suggested, "embroil [the courts] in contested custody cases."

The provisional remedies of S. 1347 would further embroil the courts in such issues. Under section 103 of the bill, federal courts would be authorized "to take . . . provisional measures under Federal or State law, as appropriate, to protect the well-being of a child or to prevent the child's further removal or concealment prior to final disposition of the petition." The bill forbids the provisional removal of a child from his or her custodian "unless the applicable requirements of state law are satisfied," deeply enmeshing the federal courts in state domestic relations law. Further, it appears that to effect such provisional remedies as temporary foster care, the federal courts would be required to make arrangements with state and local authorities, entangling the federal courts in the state and local government agencies and procedures regulating domestic relations.

For these reasons, among others, Mr. Jones' testimony strongly supported eliminating concurrent original federal jurisdiction from the bill and providing exclusive original jurisdiction in the state courts over all actions brought under the Convention. As he explained, the proposed grant of federal jurisdiction would represent a sharp departure from the longstanding policy, based on principles of federalism, of excluding domestic relations matters from the federal courts and

leaving the resolution of those sensitive issues entirely to the courts of the states.[1]

Q. *Generally, you indicate that the federal courts should not be substantially involved in domestic relations matters. In your opinion, is a state court the appropriate venue for interpreting treaties as would be required with a grant of concurrent jurisdiction under S. 1347?*

A. Yes. The state courts are and always have been an appropriate forum to resolve federal treaty issues that arise in cases before them. Of course, state court resolutions of federal issues are ultimately subject to review by the Supreme Court under 28 U.S.C. § 1257. Such Supreme Court review would continue to be available if, as we recommend, actions under the Convention could only be brought in the state courts.

There is no constitutional requirement that cases involving federal laws or treaties be heard in federal courts. The jurisdiction of the federal district courts extends only to those cases as provided by Act of Congress. Indeed, although creation of federal question jurisdiction was authorized in Article III, § 2 of the Constitution, Congress did not vest general federal question jurisdiction in the federal courts until 1875.[2] Moreover, until 1980, jurisdiction in the district courts under 28 U.S.C. § 1331 was limited to cases involving a jurisdictional minimum amount.[3] Thus, until 1980, even if a

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1/ E.g., In re Burrus, 136 U.S. 586, 593-94 (1890); Barber v. Barber, 62 U.S. (21 How.) 582 (1859). That exception rests on the principle, in the Supreme Court's words, that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states." In re Burrus, supra, 136 U.S. at 593-94. Even when a federal question is presented, the courts have declined to hear disputes that would deeply involve them in resolving domestic relations disputes. See Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), aff'd, 108 S. Ct. 513 (1988); Firestone v. Cleveland Trust Co., 654 F.2d 1212, 1215 (6th Cir. 1981); Bergstrom v. Bergstrom, 623 F.2d 517, 520 (8th Cir. 1980).

2/ Act of Mar. 3, 1875, § 1, 18 Stat. 470.

3/ Until it was amended by Pub. L. No. 96-486, § 2(a), 94 Stat. 2369, section 1331 provided for general federal question cases only if the amount in controversy exceeded $10,000. All other federal question cases, unless there were a special grant of federal jurisdiction under some other law, (continued...)

claim arose under a treaty or other federal law, but involved less than $10,000, the claim would be resolved in state court (unless there were another statute specifically granting federal court jurisdiction). Even today, where a case involves a federal issue (whether under a treaty or other federal law), but the cause of action does not "arise under" a federal law or treaty, there is no federal question jurisdiction under section 1331. Such federal law issues are routinely encountered and resolved in the state courts.

With respect to treaties in particular, federal courts have no diversity or federal question jurisdiction over probate, and the state probate courts are called upon to interpret international treaties in determining ownership of property and on reciprocal rights. See, e.g., In re Estate of Rougeron, 17 N.Y.2d 264, 270 N.Y.S.2d 578 (1966) (interpreting 1850 U.S.-Swiss treaty with respect to decedent's property in Switzerland); Estate of Arbulich, 41 Cal. 2d 86, 257 P.2d 433 (1953) (applying treaties and foreign law to determine reciprocal rights in Yugoslavia).

We would also note that, with respect to international child custody disputes in particular, the state courts already have experience under Section 23 of the Uniform Child Custody Jurisdiction Act in interpreting and enforcing foreign custody orders.

Section 1331 provides that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, and treaties of the United States." The establishment of federal requirements by statute or treaty does not, under section 1331, necessarily create a cause of action in the federal courts to enforce them. As discussed below, that is the lesson of Thompson v. Thompson, 108 S. Ct. 513 (1988), which held that the federal standards of the Parental Kidnapping Prevention Act created no cause of action in the federal courts, but were to be enforced only in the state courts, subject

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3/ (...continued)
could only be heard in the state courts.

Currently, jurisdiction of claims arising under the Carmack Amendment, 49 U.S.C. § 11707, and the Consumer Product Safety Act, 15 U.S.C. § 2072(a), involving less than $10,000 are confined to the state courts, as are claims for less than $50,000 arising under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(3).

ultimately to review, on issues of federal law, in the Supreme Court.4/

Thus, section 1331 would not preclude Congress from limiting to the state courts original jurisdiction of actions under the Convention. To make this point absolutely clear, the bill should provide for "exclusive original jurisdiction" in the state courts, as reflected in the enclosed marked up version of S. 1347.

We would also note that H.R. 3971, the version of the International Child Abduction Act passed by the House on March 29, does not explicitly establish concurrent jurisdiction in the state and federal courts, but by referencing section 1331 appears to contemplate a similar result. As passed by the House, the bill would provide state courts original jurisdiction of "actions arising under the Convention," and federal courts jurisdiction "of any action arising under the Convention to the extent authorized by chapter 85 of title 28" of the U.S. Code, which includes section 1331. The implication of this language seems to be that, because the Convention is a treaty of the United States, all actions "arising under the Convention" would, by definition, fit within the federal courts' section 1331 jurisdiction, which covers "all civil actions arising under the . . . treaties of the United States." 5/ Thus, under the bill as amended, both the federal and state courts may have jurisdiction over actions

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4/ The Federal Safety Appliance Acts, 45 U.S.C. §§ 1 et seq., are another example of statutes creating federal standards that do not, of themselves, create a cause of action in the federal courts. In Moore v. Chesapeake & Ohio Railway, 193 U.S. 205, 215 (1934), the Supreme Court held that, as to intrastate commerce, the

> Federal Safety Appliance Acts, while prescribing absolute duties, and thus creating correlative rights in favor of injured employees, did not attempt to lay down rules for enforcing those rights . . . . The . . . Acts having prescribed the duty in this fashion, the right to recover damages sustained by the injured employee through the breach of duty sprang from the principle of the [state] common law . . . and was left to be enforced accordingly.

5/ Of course, not all issues relating to the Convention would necessarily "arise under" it, but most such issues would likely come within the federal courts' pendent jurisdiction.

"arising under the Convention." 6/ Accordingly, for the same reasons that the Department opposes concurrent original jurisdiction, it would oppose the dual jurisdiction established by the House bill.

QUESTIONS OF SENATOR GRASSLEY

Q. *Page three of the State Department's testimony explains that, "the federal legislation (S. 1347) seeks to intrude as little as possible on relevant aspects of state law and procedure." What impositions upon the jurisdiction of state courts, either broadening or narrowing, does the Department see resulting from the enactment of S. 1347? (Please address the issue of concurrent versus exclusive jurisdiction over the subject matter of the Hague Convention -- including a discussion of the points raised in Thompson v. Thompson, 108 S. Ct. 513 (1988) -- and the goal of uniformity and standardization of decisions under this treaty and the issue of which party should bear the burden of proof in a case arising under this legislation.)*

A. This answer will address the different issues in turn.

1. Effect on State Court Jurisdiction

A grant of concurrent jurisdiction of claims under the Convention would neither broaden nor narrow state court jurisdiction, although it would broaden the jurisdiction of federal courts. As noted above, unless S. 1347 granted exclusive jurisdiction of such claims to the federal courts, there is nothing in the Constitution or elsewhere that would preclude the state courts from exercising jurisdiction over claims under the Convention. Of course, a grant of exclusive jurisdiction in the federal courts would severely narrow state court jurisdiction over family law matters. For the reasons discussed herein and in Mr. Jones' testimony, the Department strongly opposes a grant of concurrent or exclusive federal jurisdiction of claims under the Convention.

2. Significance of the Thompson Case

Our opposition to concurrent or exclusive federal jurisdiction is powerfully reinforced by the Supreme Court's recent decision in Thompson v. Thompson, 108 S. Ct. 513 (1988).

6/ We would note that, inasmuch as 28 U.S.C. § 1441 is not part of chapter 85 of title 28, removal jurisdiction from state to federal courts might not be available under the House bill.

That case involved the Parental Kidnapping Prevention Act, under which Congress did not create a private cause of action in the federal courts to enforce the Act, but left it to the state courts to enforce the Act's standards, subject to review by the Supreme Court under Full Faith and Credit principles. As the Supreme Court stated in unanimously affirming this interpretation of the Act earlier this year, "instructing the federal courts to play Solomon where two states have issued conflicting custody orders would entangle them in traditional state-law questions that they have little expertise to resolve." Id. at 519-20. The fact that the questions were embodied in federal law (the PKPA) did not render them suitable for federal court implementation.

The Supreme Court specifically rejected the argument that determining which of two conflicting state custody decrees should be given effect would not require resolution of the underlying custody disputes and thus not offend the longstanding reservation of domestic relations law to the states. It noted that, under the Act, jurisdiction could turn on the "best interest" of the child or whether the child had been abandoned or abused. "In fact," the Court found, "it would seem that the jurisdictional disputes that are sufficiently complicated as to have provoked conflicting state-court holdings are the most likely to require resolution of these traditional domestic relations inquiries." Id. at 520 n.4.

As noted above, just as with the PKPA, actions under the Convention would similarly require courts to consider traditional domestic relations issues that belong in the state, not the federal courts.

3. Uniformity and Concurrent Jurisdiction

Some argue that concurrent state and federal jurisdiction is needed to promote uniformity of interpretation of this legislation. Quite to the contrary, however, we are concerned that concurrent jurisdiction would likely be disruptive and lead to increased conflicts among the state and federal courts. Simply put, providing for federal and well as state court jurisdiction would substantially increase the number of courts to which cases under this Act may be brought. Each plaintiff would have the choice of a federal or state forum. Yet, the federal courts and state courts, even in the same state, would not be able to render interpretations of the Act that are binding on the other. Moreover, many states have multiple federal districts, leading to the possibility of conflicts between federal courts in the same state. Even after the federal court of appeals resolved those conflicts, that court's judgment would not be binding on the state courts of the state, nor would the judgment of the state supreme court be binding on the federal courts. This may lead to considerable confusion as well as the possibility of

forum shopping should the federal court of appeals and the state supreme court render conflicting interpretations of the Act.

As always, the Supreme Court is available to resolve such conflicting judgments among the lower courts. However, far from promoting uniformity, vesting jurisdiction not only in the state courts but in the 94 federal district courts would actively work to undermine uniformity of interpretation, by adding additional possibilities for conflict without providing the means for promoting uniformity, even for residents of the same state.

4. Bifurcation of Proceedings

It has also been suggested by some that, under sections 1331 and 1441, a party could, before or after filing an action in state court under the Convention, obtain a decision from a lower federal court on any federal questions, and then return to state court to try the rest of the case. Sections 1331 and 1441 do not, however, operate in this manner.

Section 1331, by its terms, is a grant of original, not appellate jurisdiction. Section 1441, which authorizes removal from state to federal court of cases in which the district courts have original jurisdiction, is similarly not a grant of appellate jurisdiction. Thus, sections 1331 and 1441 would not authorize appeals of federal or other issues under the Convention from state courts to the federal district courts.

Both sections 1331 and 1441 provide federal district court jurisdiction over actions, not just issues, arising under the Constitution, treaties, and laws of the United States. It follows that, if a district court has original or removal jurisdiction of an action arising under federal law, it must decide all issues, federal and nonfederal, necessary to dispose of the action.1/

In this respect, the grant of original and removal jurisdiction by sections 1331 and 1441 differs from the grant of appellate jurisdiction in the Supreme Court of federal questions under section 1257. As one group of commentators put it, "When the Supreme Court is reviewing a state court decision it can and does confine its review to the federal question in the case, but a court of original jurisdiction could not function . . . unless

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1/ Siler v. Louisville & Nashville R.R., 213 U.S. 175 (1909); Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 823 (1824) (interpreting U.S. Const. art. III, § 2); see Hagans v. Levine, 415 U.S. 528, 554 (1974) (Rehnquist, J., dissenting); UMW v. Gibbs, 383 U.S. 715 (1966).

it had power to decide all the questions that the case presents."[8/]

In a case brought under the Convention, the action would be for return of the child or enforcement of access (i.e., visitation) rights. If such an action were brought in or removed to a federal district court, that court would be required to dispose of the claim for the return of the child or enforcement of access rights, without remand or transfer to state court, even if state law issues were involved.[9/]

In other words, current law does not provide for bifurcated treatment of federal and nonfederal issues arising in a single action. If the case could be brought in or removed to federal court, the federal courts would decide all federal and nonfederal issues necessary to dispose of the action, without remand to the state courts. Conversely, if the action were brought in the state courts, without being removed to federal

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8/ 13B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3567, at 107 (1984).

9/ A federal court may remand to state court a case that has been removed in only three situations: (1) if a separate and independent nonremovable claim has been joined and removed to federal court with a removable claim, the nonremovable claim may be remanded in the district court's discretion, 28 U.S.C. § 1441(c); (2) if "at any time before final judgment it appears that the case was removed improvidently and without jurisdiction," the case must be remanded, id. § 1447(c); or (3) in the case of state-law claims pendent to the district court's federal question jurisdiction, the court may, in its discretion, remand the pendent state-law claims once all federal-law claims have been eliminated (such as by dismissal or voluntary amendment of the pleadings). Carnegie-Mellon University v. Cohill, 108 S. Ct. 614 (1988). See also Thermtron Prods. Inc. v. Hermansdorfer, 423 U.S. 356 (1976). None of these exceptions would apply to a claim brought under the Convention and removed to federal court, however, because such claims arise under federal, not state law (even though some state-law determinations may be involved in resolving the federal issues).

Of course, if other actions, arising under state law and not under the Convention, have been joined with the action under the Convention, those other claims may be dismissed from federal court if the district court determines that it lacks, or in its discretion declines to exercise, pendent jurisdiction of the state law claims. See UMW v. Gibbs, 383 U.S. 715 (1966).

court, the federal and nonfederal issues would be decided by the state courts, subject to Supreme Court review under section 1257 on federal issues. Sections 1331 and 1441 simply do not provide for appeals or limited referrals of federal issues from state courts to federal district courts.

The Department would also oppose amending the bill expressly to bifurcate between the federal and state courts actions under the Convention. Such a bifurcation of issues would be unprecedented. Moreover, apart from the additional complexity such a proposal would introduce, allowing or requiring parties to obtain decisions of federal law issues from federal district courts before concluding proceedings in state court would needlessly prolong those cases and delay the return of children or the enforcement of access rights.

5. Burden of Proof

With respect to the burden of proof issue, that is a policy matter as which the Justice Department would defer to the State Department.

Q. *What potential obstacles to meeting the obligations of a signatory to the Hague Convention has the Department considered in arriving at its position regarding the reconciling the gathering of information under S. 1347 with the individual's right to privacy?*

A. As Mr. Jones stated in his oral testimony, the Department believes that the privacy law override in section 107 of S. 1347 can be more narrowly tailored to the purposes of the Convention. The expectations of privacy protected by federal and state law are quite important, and should be respected to the extent possible in implementing the Convention. On the other hand, an abducting parent should not be able to use the privacy laws (whether state or federal) as a shield to conceal his or her location or the location of the internationally abducted child.

We think that allowing the Central Authority to override federal and state privacy laws only to obtain information on the location of the abducting parent or the child would strike the appropriate balance between protection of privacy interests and facilitating the return of abducted children. This is similar to the balance struck in 42 U.S.C. § 653, which allows the Parental Locator Service to override federal privacy laws to obtain from federal agencies information to locate absent parents. Under this type of limitation, the Central Authority could receive and disclose other information to implement the Convention, but it could not override state and

federal privacy laws to obtain such additional information.[10/] A marked-up version of S. 1347 with suggested language is enclosed.

This restriction on the Central Authority would also be consistent with the Convention, which requires each Central Authority, on the one hand, to "take all appropriate measures . . . to discover the whereabouts of a child who has been wrongfully removed or retained", and, on the other hand, to "exchange, where desirable, information relating to the social background of the child." (Article 7 (emphasis added).) The language specifically differentiates between information relating to the location of an abducted child and other kinds of information such as social background. Moreover, such qualifiers as "appropriate" or "desirable" would permit the United States to take into account its commitment to the protection of privacy in obtaining and divulging information.

10/ H.R. 3971, as passed by the House, does not contain an explicit override of federal and state privacy laws, but continues to require state or federal departments and agencies to comply with any request for information "authorized to be provided to such Central Authority under subsection (a)." Subsection (a) of H.R. 3971 authorizes the Central Authority to receive and transmit "information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child." Paragraph (1) of subsection (a) provides that the Central Authority may receive such information "only pursuant to applicable Federal and State statutes." We interpret this to mean that there is no override at all of state and federal privacy and other laws (except to the extent the Parental Locator Service is separately authorized to provide such information). In order to make this point clear, the proviso of subsection (a)(1) should be carried over to subsection (c); moreover, the census information exception in subsection (c)(2) would appear to be redundant. If, on the other hand, the Senate should choose to retain the prvacy law override, then, as suggested above, the override of state and federal privacy laws should be limited to information needed to determine the location of the abducting parent or abducted child.

As Mr. Jones stated, and as H.R. 3971 recognizes, the Central Authority's ability to obtain and disclose information should also be limited to protect state and federal law enforcement interests, as well as national security interests and, if privacy laws are otherwise overridden, the privacy of census information.

QUESTIONS OF SENATOR DIXON

Q. *S. 1347 exempts the Interagency Coordinating Group from the Federal Advisory Committee Act. Could you explain why you believe this group should be exempted?*

A. This is a policy issue as to which the Department of Justice would defer to the State Department.

Q. *This legislation dispenses with the requirement that documents be authenticated before they are admissible in court. Could you explain the process that a parent seeking the return of their child would have to go through if authentication of documents were required?*

A. The type of authentication required would depend upon whether the other country involved has ratified or acceded to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, to which the United States acceded in 1979.

If the other country involved is not a party to the Legalization Convention, then a "chain of legalization" would be required. For example, an American seeking to introduce a state court order in a foreign court would likely be required to have the state court clerk certify the genuineness (i.e., authenticate) the order, have the Secretary of State of the state authenticate the court clerk's certification, have the U.S. State Department authenticate the state Secretary of State's authentication, and have the foreign country's embassy authenticate (i.e., legalize) the State Department's authentication. A person seeking to introduce a foreign document in a U.S. state or federal court would be required to obtain a similar chain of authentications. See, e.g., Fed. R. Civ. P. 44(a)(2); Fed. R. Evid. 902(3).

On the other hand, if the other country is a party to the Legalization Convention, then the party seeking to introduce the foreign document would be required to obtain only an "apostille" from an authority or official authorized to issue it under the Convention. No further authentication is required. Each country that has ratified or acceded to the Convention has designated authorities or officials to affix apostilles. Within the states, generally the Secretary of State, and sometimes other officials, are authorized to issues apostilles with respect to court and other state documents. The clerks and deputy clerks of the federal courts are authorized to issue apostilles with respect to federal court documents. See 1 B. Ristau, International Judicial Assistance (Civil and Commercial), Pt. VI, at 269 to 284.1, App. E, at DS-109 to -124 (1984).

* * *

We appreciate this opportunity to answer the written questions submitted by the Committee and to further articulate our views on these important matters. The Department continues strongly to support the thrust of the bill. However, for the reasons stated above and in Mr. Jones' testimony, the Department of Justice strongly opposes the grant of concurrent original jurisdiction in the federal courts of actions under the Convention, and favors limiting such cases to the state courts, subject to review by the Supreme Court under 28 U.S.C. § 1257.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this letter from the standpoint of the standpoint of the Administration's program.

Sincerely,

Thomas H. Boyd
Acting Assistant Attorney General

Amendment No. 1

AMENDMENT TO H.R. 3971

OFFERED BY SENATOR

Amend section 4(a) as follows:

(a) JURISDICTION OF THE COURTS.--The courts of the States shall have exclusive original jurisdiction of all actions arising under the Convention.

Amendment No. 2

AMENDMENT TO H.R. 3971

OFFERED BY SENATOR

Amend section 9(c) as follows:

(c) RESPONSIBILITY OF GOVERNMENT ENTITIES.-- (1) Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such

department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records.

(2) If such search discloses the information requested, the head of such department, agency, or instrumentality shall, subject to applicable State and Federal statutes, immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State shall not be transmitted to the Central Authority.

(3) The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether the exception set forth in paragraph 2, or any Federal or State statute, precludes the transmission of all or part of the information.

(4) In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that the exception set forth in paragraph (2), or any Federal or State statute, prohibits transmission of the information, the Central Authority may not disclose that information under subsection (a).

Senator DIXON. Thank you very much, Mr. Jones. And thank you for adhering to the 10-minute time limit. I appreciate your accommodation in that regard in view of my time constraints.

My general impression is that the bill, with the exception of the concurrent jurisdiction question, and we will develop the smaller matters, meets the approval of both State and Justice.

You are concerned about the concurrent jurisdiction matter. I understand your point of view, and have heard what you have had to say.

I am of the opinion that other folks who are very supportive of this legislation feel quite strongly there should be concurrent jurisdiction.

I will ask you whether the administration has the kind of profound objection to that that would be persuasive in the event the Congress differed with your point of view?

Mr. JONES. Senator, I think we have tried to do our best to state the reasons why we believe that jurisdiction in the Federal courts would not be a wise alternative in the present context. We hope those reasons will be persuasive. We would be happy to talk to you and to members of the subcommittee, as the legislation proceeds. I think we all recognize the urgency in getting legislation on the subject, and we would hope the matter could be promptly resolved.

Senator DIXON. Now, I believe it was you, Mr. Pfund, who said that there were some amendments by Congressman Frank that would be agreeable to you. And without fully knowing what those amendments are, I think it has something to do with the question of information that might be obtained in these situations under the right of privacy act; is that correct?

Is he doing something to modify that?

Mr. PFUND. Yes. There is an attempt, Senator, to meet concerns that have been expressed that the language was broader than necessary.

Senator DIXON. He has made some changes, or suggested some over there that you folks have found satisfactory. Is that correct for Justice as well, Mr. Jones?

Mr. JONES. That's correct, Senator. We have seen drafts of the language that would be proposed by Congressman Frank, and we believe with respect—I think it's section 107—that the changes that he has in mind are akin to the ones that I have just suggested.

Senator DIXON. OK. Now you stated that you have a suggested amendment that you wanted to have us consider. Did you say that in your remarks just now?

Mr. JONES. Senator, the point that we were just talking about with respect to section 107 of the bill, the Privacy Act provision, that authorizes the central authority to obtain information from the States and from the Federal Government agencies.

Senator DIXON. And you would limit that in some particular in the amendment you are suggesting?

Mr. JONES. That is a matter that has been discussed. The State Department, I know, has suggested language to Congressman Frank that would focus on information that is necessary to determine the location of an abducting parent or of the child.

Senator DIXON. Well, are you and Congressman Frank as one on this, then, or is there some difference of opinion between what the

Congressman wants to do and what you are suggesting in your amendment, or are these identical?

Mr. PFUND. Senator, the specific amendment that my colleague from the Justice Department has proposed is not reflected, so far as I know, in the amendments that Congressman Frank is proposing.

However, if they were to appear in the bill in some form, here or in the House, I think we could live with them. Because while the authority of the U.S. Central Authority would be more limited than under the current language of the bill, it would nonetheless enable us to get the information that we need.

Senator DIXON. All right. Is that in your prepared text, Mr. Jones, the form of that amendment? Or do you have it at hand?

Mr. JONES. I have a draft of a marked-up version of your bill, Senator, that I would be glad to provide to the subcommittee that reflects the concerns I've expressed.

Senator DIXON. I would appreciate your doing that.

In the interests of time, I am going to give you some written questions on a variety of things that I would appreciate—and perhaps I will give them to you, Mr. Jones; well, I could give them to both of you if you don't mind. But basically some of the legal questions involved here, the burden of proof, clear and convincing evidence, and so forth, are things that as a lawyer I am a little curious about and would like to have your explanation of it, although I can see why you would want to mete a heavy burden on the objecting party, or require a heavy burden.

But I think that my perception of it from what I have heard around among the members and people who are advocates of this is that the biggest single question may be the disagreement we now encounter on the concurrent jurisdiction question.

I might ask you finally this last question. How is it that—I don't mean to imply that is a change of position on the part of the administration, but it seems to be something a little bit distinctive from what was originally suggested in the bill that was given us at the outset.

What would that be so?

Mr. JONES. Senator, as you suggest, it is a different position. And I believe it is based on a further reflection of, as Mr. Pfund said, the considerations set forth in the President's Executive order; second, of our experience under the Parental Kidnapping Prevention Act—in particular, the recent decision of the Supreme Court that discusses a number of reasons why Federal court jurisdiction would not be proper.

That case found that even as to matters of determining which State court has proper jurisdiction over a custody decree, a Federal court trying to decide between the two State courts would necessarily be enmeshed in the traditional domestic relations matters, set forth in Federal law to be sure, but codifying essentially the traditional domestic relations considerations. In our view, exactly the same considerations relate to the Hague Convention, which as I have mentioned, includes a number of provisions as exceptions to the return obligation, that relate very closely to the traditional domestic relations inquiries.

Senator DIXON. Do you have anything to add, Mr. Pfund.

Mr. PFUND. No, Senator, I think I am not in a position to say very much. Thank you.

Senator DIXON. Well, I appreciate very much the testimony of both of you, and your full text will be reproduced in the record in full. I trust that you want that done.

We would like to have that information that you have, Mr. Jones, that you have suggested in your testimony.

Mr. JONES. Certainly, Senator.

Senator DIXON. In the absence of other members who might later send you written questions, I would ask you to accommodate their requests for answers.

I thank you both.

Would the second panel be kind enough to come up? If it is satisfactory with each of you distinguished ladies and gentlemen, I think I will do this in the order that you appear in my agenda.

That would be, first, Patricia M. Hoff, cochair, Child Custody Committee, Section of Family Law, American Bar Association.

STATEMENTS OF A PANEL CONSISTING OF PATRICIA M. HOFF, COCHAIR, CHILD CUSTODY COMMITTEE, SECTION OF FAMILY LAW, AMERICAN BAR ASSOCIATION; DAVID W. LLOYD, GENERAL COUNSEL, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN; AND PHILLIP SCHWARTZ, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS AND U.S. CHAPTER OF THE INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS

Ms. HOFF. Thank you, Mr. Chairman. My name is Patricia Hoff, and I appear today accompanied by Phillip Schwartz, to my far right, on behalf of the American Bar Association, in strong support of S. 1347, the International Child Abduction Act.

Enactment of this bill will enable the United States to bring into force the Hague Convention on the Civil Aspects of International Child Abduction, a treaty expressly intended to safeguard children from the traumatic consequences of international child abduction.

The Hague Convention is designed to bring about the prompt return of a child following a wrongful removal or retention abroad, and to facilitate the exercise of visitation rights across international borders.

One of the convention's chief objectives is expeditiously to restore the factual situation that existed prior to the child's wrongful removal or retention. Not only should this foster the child's reintegration into its habitual environment, but it should also prevent a decision on the underlying custody dispute from being influenced by a change of circumstances brought about by the unilateral act of one of the parents.

The abductor is thus denied any legal advantage or reward for the abduction or retention.

Once the child is returned pursuant to the convention, litigation over substantive child custody in the child's best interests can proceed.

By promising a swift and almost certain return remedy, the convention should deter wrongful removals and retentions between ratifying countries, thereby promoting stability for countless chil-

dren who might otherwise become victims of international parental kidnaping.

The Senate has already given its advice and consent to ratification of the Hague treaty. Although the convention is self-executing, the administration has deferred depositing the instrument of ratification—and thus postponed bringing the convention into force for the United States—until legislation is enacted to establish uniform procedures to smooth the implementation of the treaty in this country.

Toward this end, S. 1347 and H.R. 2673 were developed by, and introduced on behalf of, the administration in June 1987. H.R. 2673 has now been superseded, as Mr. Pfund indicated, by H.R. 3971 and H.R. 3972, which were introduced on February 18, following a hearing before the House Judiciary Subcommittee on Administrative Law and Government Relations on February 3, 1988.

The pending legislation essentially explains how the convention will operate within the context of the U.S. legal system. The legislation translates the provisions of the convention, which are written in general terms to accommodate the diverse legal systems of the many countries that negotiated it, into terms and procedures familiar to lawyers, judges, and government officials in this country.

It is this blueprint that hopefully will foster the treaty's uniform implementation here by averting time and resource-consuming litigation over substantive and procedural issues that might otherwise arise under the treaty.

I will now address two of the bill's most discussed provisions. Section 102(a) provides for concurrent original jurisdiction in State and Federal courts to hear return proceedings arising under the convention and this legislation.

There is justification for expressly empowering both State and Federal courts to hear these cases. First, both Federal and State judges are qualified to hear cases arising under the treaty for the return of children.

On the one hand, State courts can bring to bear on return proceedings their experience with interstate and international child custody and parental kidnaping disputes.

On the other hand, Federal courts have expertise in interpreting and applying treaties that deal with wide-ranging subject matter.

Second, section 102(a) is not a departure from current law regarding enforcement of treaty obligations, and is consistent with title 28 of the U.S. Code, section 1331, which provides that district courts shall have original jurisdiction of all civil cases arising under the Constitution, laws, or treaties of the United States.

While 28 U.S.C. 1331 would apply to actions arising under the Hague Convention and the pending legislation, the Supreme Court's recent decision in *Thompson* v. *Thompson* underscores the value in expressly articulating that a cause of action for the return of a child pursuant to the convention and this legislation may be brought either in State or Federal court.

Such language would remove any question as to whether such cause of action exists, and where such an action could be brought. This would spare Congress the need to "revisit the issue" in the

future, to borrow a phrase used by the Supreme Court in the *Thompson* case.

Next, to the extent that Federal judges may be concerned about hearing cases that nominally sound like traditional child custody matters, it is significant that both the convention in articles 16 and 19, and the legislation in section 2, subsection 8, expressly provide that a decision under the convention concerning return of a child is not a determination on the merits of the underlying custody dispute. Thus, State and Federal judges applying the convention are insulated from making substantive custody determinations that turn on indepth inquiries into the child's best interests. The convention envisions that these decisions will be made once the child is returned, typically in the child's country of habitual residence, where relevant evidence would be most readily accessible.

The narrowly circumscribed role of the Federal judiciary in convention cases as set forth in section 102(a) is not without analogy for the Federal bench. Federal courts in many circuits have now held that the domestic relations exception to diversity jurisdiction does not apply to actions for damages stemming from interstate parental kidnaping.

Federal judges have successfully adjudicated these so-called child-snatching tort suits without becoming enmeshed in the underlying custody disputes.

In rejecting the judicially created domestic relations exception to diversity jurisdiction, the court in the 1984 third circuit case of *DiRuggiero* v. *Rodgers* found that "the specter of local bias surfaces with unfortunate frequency" in interstate child custody cases. Thus "these cases truly represent one of the contemporary essential functions of the diversity grant."

The need for Federal court jurisdiction may be even more pronounced in international child abduction cases under the Hague Convention where the out-of-State litigant who is seeking the child's return from the United States will typically be a foreign national.

Section 102(a) wisely does not presume to prefer Federal over State courts, or vice versa. There will be cases where litigants will elect to file in State court rather than in Federal court. Thus, in providing concurrent original jurisdiction in both State and Federal courts, the legislation properly affords as many avenues of redress as possible for the parent seeking a child's return.

With respect to the volume of cases in the United States, it is not expected to be great: perhaps 30 to 50 cases a year, spread out over courts in the entire country, at the State and Federal level. The impact on any one court will probably be negligible, or nonexistent.

Finally, addressing the question of the change in the administration's views with respect to concurrent jurisdiction, and the assertion that it was done because of the subsequently adopted Executive Order on Federalism, I think the text itself would lead to exactly the opposite conclusion. The Executive order states that "it is important to recognize the distinction between problems of national scope, which may justify Federal action, and problems that are merely common to the State, which will not justify Federal action because individual States, acting individually or together, can effectively deal with them." International child abduction is clearly a

problem of international dimension, which the States acting alone cannot adequately resolve. Thus, Federal court involvement should not be foreclosed.

Now turning to the issue within the bill raised by the question of the burden of proof. Section 102(d) places the burden of proving an exception to the return obligation on the person opposing return, who must establish by clear and convincing evidence that one of the exceptions enumerated in the convention applies.

In contrast, the person seeking return of a child must establish by a preponderance of the evidence that the child has been wrongfully removed or retained.

Placing a higher burden of proof on the respondent is compatible with the goal of restricting the use of exceptions to only extraordinary circumstances.

As a policy matter, the convention seeks to promote continuity and stability in the child's custodial circumstances. The alleged abductor has disrupted the desired stability, affecting a de facto change in physical custody, which is tantamount to a modification of custody. And there is precedent for requiring a parent, in an action to modify custody, to support the request for a modification with clear and convincing evidence.

Moreover, requiring a higher standard of proof by the respondent serves to diminish once again any legal advantage that might otherwise accrue as a result of the abductor's forum shopping, that is, litigating in the forum of his or her choice.

In conclusion, the ABA respectfully urges this committee to take favorable action on S. 1347 as soon as possible, so that the United States may become a full treaty partner under the Hague Convention.

[The prepared statement of Ms. Hoff and her responses to written questions follow:]

STATEMENT OF

HARVEY L. GOLDEN, CHAIR
SECTION OF FAMILY LAW

and

PATRICIA M. HOFF
CO-CHAIR, CHILD CUSTODY COMMITTEE
SECTION OF FAMILY LAW

AMERICAN BAR ASSOCIATION

In Support of

S. 1347
THE PROPOSED "INTERNATIONAL CHILD ABDUCTION ACT"

Mr. Chairman, members of the Subcommittee:

My name is Patricia M. Hoff. I appreciate the opportunity to appear before you today on behalf of the President of the American Bar Association, Robert MacCrate, and Harvey Golden, chairman of the Family Law Section, in strong support of S. 1347, the "International Child Abduction Act. The ABA applauds this committee for convening this hearing at the start of the session, and pledges the full support of the Association in your efforts to promptly approve this important legislation. Enactment of this bill will enable the United States to bring into force the Hague Convention on the Civil Aspects of International Child Abduction, a treaty expressly intended to safeguard children from the traumatic consequences of international child abduction.

I serve currently as co-chair of the Family Law Section's Child Custody Committee, and as a member of that section's ad hoc committee on the ratification and implementation of the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"). Previously, I participated in the final negotiations on the Hague Convention as congressional advisor to the U.S. delegation, served as a member of the State Department's Study Group on the convention, and drafted a legal analysis of the Hague Convention at the request of the State Department. Joining me as the other representative of the ABA is Philip Schwartz, who currently chairs the Federal Legislation and Procedures Committee of the Family Law Section and the Subcommittee on the Hague Convention on the Civil Aspects of International Child Abduction, Section of International Law and Practice.

The ABA's support for S. 1347 is a direct outgrowth of nearly two decades of deep concern on the part of the Association -- as reflected in various ABA resolutions -- about the harmful effects that parental kidnapping has on children.

In October, 1980, Lawrence Stotter, past chairman of the Family Law Section, represented the ABA as observer on the U.S. delegation at the final negotiations of the Convention. Shortly after the completion of the negotiations leading to the final text of the treaty, the ABA in February 1981 adopted a resolution urging "the appropriate government agencies to approve and ratify the Convention on the Civil Aspects of International Child Abduction as proposed by the Hague Conference on Private International Law."

Background

The child abduction treaty is designed to secure the prompt return of children who have been wrongfully removed from, or retained outside of, their country of habitual residence, and to facilitate the exercise of visitation rights across international borders. Article 3 of the treaty defines when a removal or retention is wrongful.

Once the Convention comes into force for the United States, new administrative and judicial remedies will be available to secure the return of children who are wrongfully removed from the U.S. to a ratifying country, or wrongfully retained in a ratifying country. These remedies, of course, would also apply in the reverse situation, if a child is removed from a ratifying country and wrongfully taken to, or retained in, the U.S. Each country that ratifies the Convention must establish at least one Central Authority to expeditiously process incoming and outgoing requests for assistance in securing the return of a child or the exercise of visitation rights. The Convention also establishes a judicial remedy in wrongful removal and retention cases which permits an aggrieved parent to seek a court order for the child's prompt return.

The Convention does not depend upon the existence of court orders as a condition to returning children, nor does it seek to settle disputes about legal custody rights. Its chief objective is to restore the factual situation that existed prior to the child's wrongful removal or retention. Once the child has been returned, litigation over substantive child custody can proceed. By promising a swift and almost certain return remedy, the Convention should also have the effect of discouraging abductions in ratifying countries, thereby protecting children from emotionally and/or physically wrenching upheavals.

In June, 1986, in testimony before the Senate Foreign Relations Committee, the ABA urged the Senate to promptly ratify the treaty, and to swiftly enact legislation to ensure its effective implementation. On October 9, 1986, by a vote of 98 to 0, the Senate gave its advice and consent to ratification.

However, as indicated in the Secretary of State's submission of the Convention to the President for transmission to the Senate, the State Department has postponed depositing the instrument of ratification -- and thus postponed bringing the Convention into force in the United States -- until legislation is enacted to facilitate the smooth implementation of the Convention throughout this country. H.R. 1347 and S. 2673 were developed for this purpose by the State Department in consultation with the Justice Department, the Department of Health and Human Services, and a Special Study Group comprised of private sector experts on family law. These bills were introduced in Congress in June, 1987 on behalf of the Administration after OMB clearance.

On October 8, 1987, the Senate adopted the text of S. 1347 as an amendment to the State Department authorization bill, H.R. 1777. The ABA expressed its strong support for prompt enactment of this language. Since the provision was not retained in conference, we now have this opportunity to assure that this needed legislation is promptly and thoughtfully reviewed and enacted.

Immediate congressional approval of this legislation is imperative to allow the U.S. to join the growing list of countries in which the treaty's remedies are already a reality: Australia, Canada, France, Luxembourg, Portugal, Spain, Switzerland and the United Kingdom. The Convention is also in effect between Hungary and the United Kingdom, Luxembourg and France. Additionally, there are indications that Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands and Sweden all plan to become parties to the Convention in the near future.

The pending legislation essentially explains how the Convention will operate within the context of the U.S. legal system. The legislation translates the provisions of the Convention -- which are written in general terms to accommodate the legal systems in the many countries that negotiated it -- into more specific terms and procedures familiar to lawyers, judges and government officials in this country. It is this "blueprint" that hopefully will foster the treaty's smooth and uniform implementation here by averting time- and resource-consuming litigation over substantive and procedural aspects of the treaty. S. 1347, inter alia, defines certain terms used in

the Convention; provides that return proceedings may be brought either in state or federal court; authorizes courts to take provisional measures to prevent the child from being further removed or concealed; authorizes the establishment of a Central Authority one function of which is to obtain information from various federal sources about the location of the child or abductor, and establishes an interagency body to monitor implementation of the Convention. Three of the bill's most discussed provisions -- Sec. 102(a), Sec. 102(d) and Sec. 104 -- are discussed below.

Court Jurisdiction

Section 102(a) provides for concurrent original jurisdiction in state and federal courts to hear return proceedings arising under the Convention and this legislation. There is justification for expressly empowering both state and federal courts to hear such cases.

On the one hand, state courts can bring to bear on return proceedings their experience with interstate and international child custody and parental kidnapping disputes. On the other hand, federal courts have expertise in interpreting and applying treaties that deal with wide-ranging subject matter.

Section 102(a) is consistent with existing law, which provides that

> "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331.

While 28 U.S.C. 1331 would apply to actions arising under the Hague Convention and the pending legislation, the Supreme Court's decision on January 12, 1988 in Thompson v. Thompson, 108 S. Ct. 513 (1988) underscores the value in expressly providing -- as sec. 102(a) of S. 1347 does -- that a cause of action pursuant to the Convention and this legislation may be brought either in state or federal court. Such language removes any question as to where an action for return can be brought, and spares Congress the need to "revisit the issue" in the future.

To the extent that federal judges may be concerned about hearing cases that nominally sound like traditional child custody matters, it is significant that both the Convention, in Articles 16 and 19, and the legislation, in section 2(8), expressly provide that a decision under the Convention concerning return of a child is not a determination on the merits of the underlying custody dispute. The court hearing a return proceeding is limited to deciding whether

a child's removal or retention was wrongful within the meaning of the Convention, or whether one of the narrow exceptions to the return obligation as set forth in the Convention would apply. Thus, state and federal judges applying the Convention are insulated from making substantive custody determinations that turn on in-depth inquiries into the child's best interest. The Convention envisions that these Solomon-like decisions will be made once the child is returned, typically in the child's country of habitual residence where relevant evidence would be most readily accessible.

The narrowly circumscribed role of the judiciary in Convention cases as set forth in sec. 102(a) is not without analogy for the federal bench. Federal courts in many circuits have held that the "domestic relations exception" to diversity jurisdiction -- which originated in dicta in Barber v. Barber, 62 U.S. 582 (1858) and In re Burrus, 136 U.S. 586 (1890) -- does not apply to actions for damages stemming from interstate parental kidnapping. Federal judges have successfully adjudicated tort claims without becoming enmeshed in the underlying custody disputes. See, e.g., Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978); Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982); Fenslage v. Dawkins, 629 F.2d 1107 (5th Cir. 1980). In rejecting the judicially-created domestic relations exceptions to diversity jurisdiction, the court in DiRuggiero v. Rodgers, 743 F.2d 1009, 1019(3d Cir. 1984), found that "the spectre of local bias surfaces with unfortunate frequency" in interstate child custody cases. Thus, "these cases truly represent one of the contemporary essential functions of the diversity grant." The benefit of, and need for, federal court jurisdiction may be even more pronounced in international child abduction cases arising under the Hague Convention, where the out-of-state litigant is truly a foreigner.

Finally, Section 102(a) wisely does not presume to prefer federal over state courts, or vice versa. In providing concurrent original jurisdiction in both state and federal courts, the legislation affords as many avenues of redress as possible for the parent seeking the child's return.

Burden of Proof

Section 102(d) places the burden of proving an exception to the return obligation on the person opposing return, who must establish by clear and convincing evidence that one of the exceptions enumerated in the Convention applies. In contrast, the person seeking return of a child must establish by a preponderance of evidence that the child has been wrongfully removed or retained. Placing a higher burden of proof on the respondent is compatible with the goal of restricting the use of exceptions to only extraordinary circumstances.

As a policy matter, the Convention seeks to promote continuity and stability in the child's custodial circumstances. The alleged abductor has disrupted the desired stability, effecting a de facto change of physical custody, which is tantamount to a modification of custody. There is precedent for requiring a parent, in an action to modify custody, to support the request for modification with clear and convincing evidence. See, Ill. Rev. Stat. ch. 40, sec. 610(b); Mich. Comp. Laws Annot., sec. 722.27(c); Bergeron v. Bergeron, 492 So. 2nd 1193, 1200 (La. 1986). Moreover, requiring a higher standard of proof by the respondent serves to diminish any legal advantage that might otherwise accrue as a result of his/her "forum shopping" -- litigating in the country of his/her choice.

Legalization of Documents

Section 104 dispenses with the need for authentication or legalization of specified documents submitted pursuant to the Convention. This section directly implements the express requirements of Articles 23 and 30 of the treaty. Similar requirements are found in all Hague conventions involving transmission of documents among contracting states. Once any such documents are admitted, it is for the trier of fact to determine how much weight they will be accorded, if any, pursuant to the applicable rules of evidence in that jurisdiction.

In conclusion, the ABA respectfully urges this Committee to take favorable action on S. 1347 as soon as possible so that the United States may become a full treaty partner under the Hague Convention on the Civil Aspects of International Child Abduction.

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March 3, 1988

Hon. Howell Heflin
Chairman, Subcommittee on Courts and
Administrative Practice
Senate Committee on the Judiciary
U.S. Senate
223 Hart Building
Washington, DC 20510

Dear Mr. Chairman:

The American Bar Association appreciates the opportunity to respond to Senator Thurmond's question posed in your letter of February 25, regarding Section 102(a) of S.1347, which provides for concurrent jurisdiction in state and federal courts over questions brought pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. As the ABA's witness on February 23 I am pleased to respond to Senator Thurmond's question:

> "There is some concern among federal judges that granting of concurrent jurisdiction will embroil them in contested custody cases, disputes best left to state family courts to resolve. Do you think this is justified?"

The ABA believes that the concern expressed by some federal judges that a grant of concurrent jurisdiction will embroil them in contested child custody cases is unjustified, and that the concurrent jurisdiction provision should be approved as included in S.1347 without amendment.

First, the grant of concurrent jurisdiction intentionals does not presume to prefer state over federal courts, or vice versa, but rather recognizes the qualifications of both courts to hear actions arising under the Child Abduction Treaty.

To the extent that federal judges may be concerned about hearing cases that nominally sound like traditional child custody matters, it is significant that both the Convention, in Articles 16 and 19, and the legislation, in section 2(8), expressly provide that a decision under the Convention concerning return of a child is not a determination on the merits of the underlying custody dispute. The court hearing a return proceeding is limited to deciding whether a child's removal or retention was wrongful within the meaning of the Convention, or whether one of the narrow exceptions to the return obligation as set forth in the Convention would apply. Thus, state and federal judges applying the Convention are insulated from making substantive custody determinations that turn on

in-depth inquiries into the child's best interest. The Convention envisions that these Solomon-like decisions will be made once the child is returned, typically in the child's country of habitual residence where relevant evidence would be most readily accessible. The legislation, therefore, would not alter any ability of a parent to continue to have the underlying custody issue resolved in the local or state courts.

Second, the narrowly circumscribed role of the judiciary in Convention cases as set forth in sec. 102(a) is not without analogy for the federal bench. Federal courts in many circuits have held that the "domestic relations exception" to diversity jurisdiction -- which originated in dicta in Barber v. Barber, 62 U.S. 582 (1858) and In re Burrus, 136 U.S. 586 (1890) -- does not apply to actions for damages stemming from interstate parental kidnapping. Federal judges have successfully adjudicated tort claims without becoming enmeshed in the underlying custody disputes. See, e.g., Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978); Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982); Fenslage v. Dawkins, 629 F.2d 1107 (5th Cir. 1980). In rejecting the judicially-created domestic relations exceptions to diversity jurisdiction, the court in DiRuggiero v. Rodgers, 743 F.2d 1009, 1019(3d Cir. 1984), found that "these cases truly represent one of the contemporary essential functions of the diversity grant." The benefit of, and need for, federal court jurisdiction as well as state court jurisdiction may be even more pronounced in international child abduction cases arising under the Hague Convention, where the out-of-state litigant is truly a foreigner.

Third, empowering both state and federal courts to hear Convention cases will enhance the perception of federal governments party to the Hague Convention that the U.S. has brought to bear on return cases all of its judicial resources. This should foster an atmosphere of greater cooperation by these federal governments in cases brought in their courts for the return of children to this country.

The return of a child pursuant to the Hague Convention is more than a traditional, private family law matter: it is a treaty obligation. It would be anomalous to affirmatively exclude federal courts from the role they have traditionally played --the enforcement of treaty obligations. It is in the national interest that this Treaty operate effectively from the outset both as a vehicle for the return of abducted children, and as deterrent to international child abduction. A grant of concurrent jurisdiction in treaty cases will serve this interest -- which is to say, the interest of the child.

We will be pleased to respond to any other questions that may arise.

Sincerely,

Pat M. Hoff

Pat M. Hoff
Co-Chair
Child Custody Committee

PMH/mlc

Senator DIXON. I thank you very much. Thank you for confining yourself to the 10-minute limit. I might observe that all of your legal statements were very persuasive.

One of the most persuasive things of all, probably, was the nonlegal observation that there are a limited number of these cases anyway. I think this is a tempest in a teapot to worry about imposing on the Federal courts with the number of cases that would be involved here.

That observation, I'm glad you made it, had not occurred to me that the cases will be relatively small in number around the country.

I do take into account, may I say, that the Federal courts are very, very busy. All of us understand that. And there probably is a good case to be made for the fact that there's more than the judges can now do.

But again, I think that's why your point is so valid here.

Mr. David Lloyd, general counsel, National Center for Missing and Exploited Children.

STATEMENT OF DAVID W. LLOYD

Mr. LLOYD. Thank you, Mr. Chairman. I request that my written remarks be entered into the record of this hearing.

The National Center for Missing and Exploited Children believes that the International Child Abduction Act will appropriately implement the Hague Convention on the Civil Aspects of International Child Abduction without the need for amendment.

In particular, the national center believes that the grant of concurrent jurisdiction in section 102(a), to Federal and State courts, to cases arising under the act, is necessary in order to fully implement the convention.

The center believes that the limited nature of the proceedings under the convention should not embroil the Federal courts in complex domestic relations issue.

The convention and the act itself make it clear that what the court is to determine is whether in fact there was custody rights or rights of access outstanding at the time of the petition; whether certain facts are found to have existed that are determined to be a wrongful taking, and therefore to invoke the proper remedies for return of the child or for safeguarding of the rights of access.

Those are not complex factual determinations regarding the best interests of the child. Those are the type of factual determinations with which both Federal and State courts have had long familiarity.

In addition to that, the Federal courts, both from having tort suits that involve child snatching between States, as well other types of diversity cases where the psychological wellbeing of the child are at issue, are used to hearing psychological and psychiatric testimony with respect to the child's functioning.

Therefore, the other concern for the reason not to grant removal, that is, that the child has been settled in the jurisdiction, would not be beyond the ability of the Federal court judges to handle.

The third reason that would apply, similarly, would be the taking into account the child's own wishes if the child was of

mature age. I do not think that that requires a level a expertise that Federal courts would be unfamiliar with.

Senator DIXON. If I could interrupt at that point, I am a little curious about that. It's been mentioned before. I remember what the law was in my State as an old trial lawyer. But now that varies from State to State, I expect. So I imagine, what would you do there? Just kind of take into account that it's a mature enough child to make its own judgment or something?

Mr. LLOYD. Senator, unfortunately, that has been in fact the case. There are children who are of age 6 but of incredible maturity for a 6-year-old. There are children who are of age 13 who have somewhat less maturity than one might expect.

So it would be very hard to have a factual type of uniformity, whether between the States or between the States and the Federal Government.

Senator DIXON. I'm sorry to interrupt you.

Mr. LLOYD. That's quite all right. Thank you.

We also believe that the practical aspects of this legislation cannot be overemphasized. If the legislation is to take effect, its primary goal is to serve as a deterrent.

Therefore, if at most there are 50 or so cases within the first few years, as the word gets out, and as more and more nations enter into either individual reciprocal agreements with the United States, or accede to the convention, there should be less and less cases, so that the burden on the Federal courts, and on the State courts, would diminish to one that does not raise any real problem of serious enmeshment in domestic relations issues, whether they are complex, whether they are traditional, or otherwise.

The center also believes that section 102(d), the provision that shifts and raises the burden of proof to the respondent who opposes return, is appropriate to effect the purposes of the convention, since the proceedings do not serve as final custody decrees.

The center also believes that these are quite familiar, since they operate similarly to the operation of presumptions and affirmative defenses, with which both State courts and Federal courts have familiarity.

The center further believes that section 104, which is the provision that eliminates the necessity for legalization of foreign public documents to establish their admissibility in proceedings under the convention is appropriate. It is similar to existing rules of procedure in both the State and Federal courts, and rules of evidence, because the parties will always have the opportunity to challenge the accuracy of those documents, but it merely paves the way for simplicity in the original admissibility under which the later accuracy can be contested.

Finally, the center believes that section 107 does provide sufficient safeguards in balancing the Central Authority's need for access to information to locate the parent and the child, while respecting the privacy rights of the individuals.

We feel very confident that as the Central Authority would promulgate its regulations in giving this section effect, that they would take careful consideration to restrict their need for access to that type of information that merely identifies that whereabouts of a parent and child.

Thank you very much, Mr. Senator.

[The prepared statement of Mr. Lloyd follows:]

STATEMENT OF

David W. Lloyd, General Counsel

for the

NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN
Ellis E. Meredith, President

SUMMARY OF TESTIMONY

The National Center for Missing and Exploited Children believes that the International Child Abduction Act, S. 1347, will appropriately implement the Hague Convention on the Civil Aspects on International Child Abduction without the need for amendment.

In particular, the National Center believes that the grant of concurrent jurisdiction in Section 102(a) to federal and state courts to cases arising under the Act is necessary in order to fully implement the Convention. Since there is a need for uniformity in interpretation of the Convention, federal court jurisdiction is imperative. The limited nature of the proceedings under the Convention should not embroil the federal courts in complex domestic relations issues.

The Center believes that Section 102(d), the provision shifting and raising the standard of proof to the respondent opposing return, is appropriate to effect the purposes of the Convention, since such proceedings do not serve as final custody decrees. Alternatively, the Center suggests shifting the burden of proof without raising the standard of proof.

The Center believes that Section 104, the provision eliminating the necessity for legalization of foreign documents to establish their admissibility in proceedings under the Convention, is appropriate, since it is similar to existing rules of procedure, evidence, and an existing Hague Convention, and since the parties may always challenge the accuracy of the documents.

Finally, the Center believes that Section 107 provides sufficient safeguards in balancing the Central Authority's need for access to information to achieve the goals of the Convention while respecting the privacy rights of individuals.

* * *

Mr. Chairman, the National Center for Missing and Exploited Children appreciates the opportunity to discuss with the Subcommittee on Courts and Administrative Practice the enactment of the International Child Abduction Act, S. 1347.

The National Center for Missing and Exploited Children was established in April of 1984 to inititate programs to protect children, provide assistance to those seeking to locate and reunite missing children with their families, and provide assistance to those combatting the incidence of sexual exploitation of children. The Administrator of the Office of Juvenile Justice and Delinquency Prevention,

pursuant to Section 404(b) of the Missing Children's Assistance Act, has entered into a cooperative agreement with us to provide a national toll-free telephone hotline to which people can report the location of missing children and request information as to how reunification can be effected, and to provide a national resource center and clearinghouse to provide technical assistance to local and state governments, law enforcement agencies, public and private nonprofit agencies, and individuals with respect to missing and sexually exploited children.

In the course of providing this assistance, the Center has received several hundred calls and letters from missing children's organizations, police officers, attorneys, and parents requesting assistance in recovering children who have been victims of international parental kidnapping. In the last three months alone, the Center was asked for assistance in fifteen such cases. The vast majority of international parental kidnapping cases known to the Center involve children taken from the United States by a parent who retains citizenship in another nation, but we have also received requests for assistance from foreign nationals whose child has been kidnapped by the other parent and brought and retained in the United States. Some of these cases request assistance in trying to locate the child within the United States, while others involve questions as to whether a state court will enforce return of the child pursuant to the order of a court in the other nation.

The Center is deeply appreciative of the assistance provided by the Office of Citizen Consular Affairs of the Department of State to those attempting to return internationally abducted children. We believe that the International Child Abduction Act can be of great benefit in encouraging other nations to ratify and accede to the Hague Convention on the Civil Aspects of International Child Abduction. We have also been told foreign governments will be more willing to order the return of U.S. children under the principle of comity, even if those nations do not themselves sign the Convention, if the United States begins implementation of the Convention.

The Center is aware that some particular provisions of the legislation are controversial, and I would like to address these.

CONCURRENT ORIGINAL JURISDICTION

First, the Center believes that the granting of concurrent original jurisdiction to the courts of the states, the District of Columbia, the territories and possessions of the United States, and the United States district courts in Section 102(a) is the correct approach.

Virtually all of the state courts already have jurisdiction to enforce foreign custody and visitation orders under Article 23 of the Uniform Child Custody Jurisdiction Act (UCCJA). While Article 23 gives authority to enforce the order of a foreign court relating to child custody and right of access, it requires the state court to inquire into the procedural rules of the foreign court to ascertain whether notice and an opportunity to be heard were provided, since they are prerequisites to enforcement. Moreover, the UCCJA would allow the state court to modify the foreign order if jurisdictional prerequisites were met, instead of merely ordering the child's return for litigation that modifies or enforces the order in the nation of the child's habitual residence. Most troublesome of all, Arizona and Oregon made Article 23 discretionary in their enactment of the UCCJA while Missouri, New Mexico, Ohio and South Dakota have omitted this

provision entirely from their enactments of the UCCJA. Thus, some foreign litigants may not have a remedy under the UCCJA. This unfortunate situation has contributed to the perception that implementation of the Convention by the Congress is imperative.

We believe that if Congress restricts jurisdiction of cases arising under the Convention to state courts, there is a greater likelihood that the procedures of the Convention will not be uniformly applied. This will complicate the task of foreign litigants and the U.S. Central Authority.

Article III, Section 2 of the Constitution makes it clear that federal judicial power extends to cases arising under federal law and treaties. Federal court jurisdiction might extend to cases brought under the Act as cases presenting federal questions (28 U.S. Code Sec. 1331(a)) While it is true that "rarely is the relationship between a private claim and a general treaty sufficiently direct so that it may be said to 'arise under' the treaty," Dreyfus v. Von Finck, 534 F.2d 24 (2d Cir. 1976, citing 13 Wright, Miller & Cooper, Federal Practice and Procedure Sec. 3563 at 424 (1975)), the Convention clearly confers a right upon a private claimant to seek redress in the courts of the United States with the assistance of the federal government's Central Authority.

The Center does not believe that a case brought under the Act would have jurisdiction under the Alien Tort Claim Act (28 U.S. Code Sec. 1350) (although at least one case, Abdul-Rahman Omar Adra v. Clift, 195 F.Supp. 857 [D. Md. 1961] holds to the contrary).

If neither of these two statutes is deemed to confer existing jurisdiction for federal courts for cases arising under the Act, there is nothing to prohibit Congress from granting concurrent jurisdiction under Article III, Section 2, for cases arising under the Act without requiring a sum of money to be in question as an element of jurisdiction.

Moreover, concurrent jurisdiction is not without precedent. Federal court jurisdiction arising under federal statutes is concurrent with state court jurisdiction unless the federal jurisdiction is expressly restricted.

Since neither the Convention nor the Act empowers a court to determine the merits of the underlying custody order or claim, but merely to order or deny a petition for return of the child, since Articles 7, 14, and 15 authorize the gathering of relevant facts regarding the child's social background and the wrongfulness of the removal or retention, and since the grounds for denial of the the petition are so limited, the Center does not believe that the Act imposes factfinding responsibilities upon the federal courts that require the federal courts to have the extent of expertise in domestic relations matters that state courts must have.

In addition, since the Act is in the nature of a procedural remedy to restore the parties to the status quo, the grant of concurrent jurisdiction is within the spirit of the Convention's efforts to resolve the problem of international abduction and deter future abductions.

As to concerns about the practical impact of granting federal court jurisdiction over cases arising under the Convention, the Center does not believe that the federal courts will be swamped with vast numbers of new cases, as had been expressed when the issue of granting federal court jurisdiction for domestic child custody cases

was being discussed during the passage of the Parental Kidnapping Prevention Act. Article 29 of the Convention and Section 102(f) of the Act make it abundantly clear that the remedies under the Convention are in addition to other legal remedies. As was noted in the "Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction" published in the Federal Register (Vol. 51., No. 58, p. 10503) on March 26, 1986, in some cases a foreign national might choose to litigate the issue of having a child returned to his/her country from the U.S. by invoking Article 23 of the Uniform Child Custody Jurisdiction Act in the appropriate state court rather than in relying on return under the Convention.

BURDEN OF PROOF

Second, the provisions of Section 102(d) that shift the burden of proof to the respondent opposing return, and raise that burden of proof to one of clear and convincing evidence are not altogether unprecedented. This provision is analogous to an affirmative defense, or to the operation of a presumption that shifts the burden of production of evidence to the opposing party. There is ample precedent for such a shifting of the burden of production of evidence under the rules of both federal and state civil procedure and evidence; Rule 8(c) of the Federal Rules of Civil Procedure lists a number of common affirmative defenses and Rule 301 of the Federal Rules of Evidence describes the operation of presumptions in shifting the burden of production of evidence. The Supreme Court has recognized that shifting the burden of proof is neither new nor novel; in Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, at 209 (1973), the Court stated

> There are no hard-and-fast standards governing the allocation of the burden of proof in every situation. The issue, rather, "is merely a question of policy and fairness based on experience in the different situations."

(Citing 9 J. Wigmore Evidence Sec. 2486 at 275 (3d ed. 1940)). As the purposes of the Convention and the Findings of Congress regarding the Act make clear, the allocation of the burden of proof should rightfully be greater on the party opposing return.

Although Rule 301 does not permit the shifting of the burden of proof in the sense of persuasion, it is important to note that in enacting Rule 301, Congress specifically retained the right to provide for alternative operation of presumptions in specified civil actions and proceedings. Thus, Congress can clearly authorize the shifting of the burden of persuasion to the respondent who claims that one of the Exceptions set forth in the Convention applies. The Center believes that the intent of Articles 2, 11, and 13 of the Convention, and paragraphs (4) and (5) of the Congressional findings in Section 2 of the Act would best be effected by shifting the burden of proof in the sense of persuasion as specified in Section 102(d).

Nor is the raising of the burden of proof altogether unique. For example, in petitions brought in a juvenile court alleging that a child is neglected by reason of abandonment, the government must generally prove the petition by a preponderance of the evidence; if the government elects to terminate parental rights in the same proceeding, it must prove its motion by clear and convincing evidence.

The Act is unique, however, in its combination of shifting and raising the burden of proof. Such a step is in keeping with the intent of Articles 2, 11, and 13 of the Convention, and with paragraphs (4) and (5) of the Congressional findings in Section 2 of the

Act. If this raising of the burden of proof is unsatisfactory, the Center believes that the purposes of the Act can be effected by merely substituting the phrase "a preponderance of the" for the phrase "clear and convincing," thus merely shifting the burden of production and persuasion to the respondent.

If the Subcommittee is concerned that Congress lacks power to enact this subsection to regulate the procedure of state courts hearing petitions for return under the Convention, it may choose to grant jurisdiction under Section 102(a) solely to the federal courts and enact this subsection only for federal courts.

ADMISSIBILITY OF DOCUMENTS

Section 104 merely restates Article 30 of the Convention, which must be read in conjunction with Article 8 of the Convention. The Center believes that Section 104 does not radically change existing procedures in federal and state courts, since it only relates to admissibility, and not to the judicial determination of the ultimate accuracy of the documents.

The United States has been bound by the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents since 1981, which is similar to the operation of Article 8 of the Convention. Article 8 of the Convention also appears to be somewhat similar to Rule 44(a)(2) of the Federal Rules of Civil Procedure and Rule 902(3) of the Federal Rules of Evidence.

Under Article 8 of the Convention, a person applying for the assistance of a Central Authority may also supply an authenticated copy of any relevant decision or agreement or a certificate or affidavit from a Central Authority or other competent authority concerning the relevant law; under Articles 14 and 15 the authorities may take judicial notice of relevant law and may request the applicant to obtain a determination from the authorities in the nation of habitual residence that the removal or retention of the child was wrongful within the meaning of the Convention.

It thus appears likely that the court would be presented with documents that accurately present facts. In any event, neither of the two Conventions nor the Act prohibits the respondent from challenging the accuracy of the documents once they are admitted into evidence. Therefore, the Center believes that Section 104 is correctly written.

CENTRAL AUTHORITY ACCESS TO PRIVACY ACT INFORMATION

Article 7 of the Convention requires the Central Authority to take "all appropriate measures" to discover the whereabouts of a child sought under the convention. Section 107(a) of the Act appropriately seeks to implement that obligation by granting the Central Authority information as to the whereabouts of the child through access to records otherwise confidential under the Privacy Act.

The Privacy Act itself contains a number of significant exceptions. The Center believes that the right of the Central Authority to obtain information relevant to the purposes of the Convention is similar to the seventh exception to the conditions of disclosure of information safeguarded by the Privacy Act:

> (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States

for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(5 U.S. Code Sec. 552a.)

The Center further believes, based on our experience with domestic parental kidnapping cases, that to apply the notice requirements of the Privacy Act to the individual whose records are disclosed will simply lead to the disappearance of that individual, and thus defeat the purposes of the Convention.

Finally, the Center believes that the provision of Section 107(a) that the Central Authority prescribe regulations for the receipt and transmission of information, and the requirement of Section 107(d) that it use the Federal Parent Locator Service to obtain such information in preference to using subsection (c) of Section 107, contain adequate safeguards for protection of individuals' privacy. Frankly, the Center does not anticipate that there will be many individuals whose records, to the extent that they are maintained at all by a federal agency, cannot be found through the Federal Parent Locator Service.

CONCLUSION

The National Center for Missing and Exploited Children is grateful for this opportunity to address these issues and would be happy to provide whatever further assistance it can to the Subcommittee in its deliberations on the International Child Abduction Act. We know that children who have been parentally abducted bear hidden emotional scars that may never heal. The National Center believes that implementation of the Convention by passage of the International Child Abduction Act is vital to the effort to protect children throughout the world from this potentially tragic outcome. Whether they are children of foreign nationals wrongfully brought to and retained in the United States, or children of U.S. citizens wrongfully taken to and retained in another nation, they are <u>our</u> children.

* * *

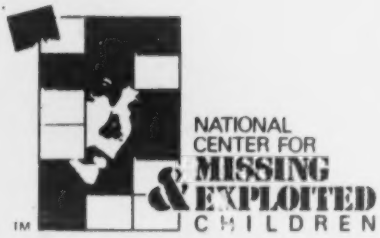
BIOGRAPHICAL SKETCH
of
DAVID W. LLOYD

DAVID W. LLOYD, J.D., is General Counsel for the National Center for Missing and Exploited Children. In that capacity he serves as director of the Center's legal technical assistance unit and provides consultation on legal issues related to status offenders, runaways, abducted children, parental kidnappings, child pornography, child prostitution, and other forms of child sexual exploitation. He also provides technical assistance to federal, state, and local governments on legislation and regulations.

Mr. Lloyd provides training across the nation to law-enforcement, legal, child welfare, medical, and mental health professionals on the following legal topics affecting missing, physically abused, sexually abused and sexually exploited, and neglected children: statutes, evidence, expert testimony, legal reforms for child witnesses, and preparing children for court.

Mr. Lloyd has written numerous articles in professional journals on legal and forensic issues related to child maltreatment; and he is the author of two chapters in books published by the American Bar Association. Prior to joining the National Center, he was Counsel for the Division of Child Protection at Children's Hospital National Medical Center in Washington, D.C., where he served as legal advisor to a multidisciplinary team that assisted more than 1,000 maltreated children annually.

Mr. Lloyd received his law degree from Georgetown University Law Center in Washington, D.C., and his B.A. cum laude in international relations from American University in Washington, D.C. He resides with his wife and two daughters in Silver Spring, Maryland.



1835 K Street, N.W. • Suite 700 • Washington, D.C 20006
202/634-9821

March 4, 1988

The Honorable Paul Simon
U.S. Senate
102 Dirksen Senate Office Building
Washington, DC 20510-1302

Dear Senator Simon:

I am writing to you to express the continued support of the National Center for Missing and Exploited Children, and the many parents who have suffered from international parental kidnapping, for the passage of the International Child Abduction Act.

The Center has received inquiries from some Congressmen and Senators about the granting of state and federal court jurisdiction in Section 102(a). We continue to believe that such concurrent jurisdiction is necessary. If the Convention is to act as a deterrent, foreign governments and individuals must perceive that the United States government firmly supports the Convention and will use all its power to enforce it. Such a perception is lost if we prohibit federal courts from having concurrent jurisdiction with state courts in these cases.

The specific concern that some Congressmen have raised is whether federal judges would be embroiled in contested custody cases (disputes that the Center agrees are generally best left to the state family courts to resolve). In the Center's opinion this is not a justifiable concern for the reasons that follow.

First, the Hague Convention on the Civil Aspects of Child Abduction does not provide authority for either a federal or a state judge to become embroiled in a custody dispute. Articles 12 through 20 do not require a federal or state judge to issue an order on the basis of "the best interests of the child"--the traditional standard in domestic custody disputes, and one which state family court judges are clearly more experienced to ascertain than federal judges. Instead, the primary task for the judge will be to determine a number of facts and apply the law, neither of which is beyond the traditional competence of federal judges. These determinations include:

1. Was the removal or retention wrongful according to the law of the

child's habitual residence (using information provided by the Central Authority of the nation of the child's habitual residence or taken by judicial notice)? (Articles 3, 12, 14, and 15)

2. If so, were the proceedings commenced within one year from the date of the removal or retention? (Article 12)

3. If the proceedings were not commenced within one year from the date of the removal or retention, has the party opposing return proved that the child is now settled in his/her new environment? (Article 12)

4. If the taking or retention was wrongful, had the party seeking return voluntarily failed to exercise the custody rights or consented to or acquiesced in the removal or retention? (Article 13)

5. If the taking or retention was wrongful, would return place the child in grave risk of physical or psychological harm or otherwise in an intolerable situation (using information about the child's social background provided by the Central Authority or other competent authority from the nation of the child's habitual residence)? (Article 13)

6. If the taking or retention was wrongful, has the child reached the age and level of maturity where the judge should take account of his/her objections to return (using information about the child's social background provided by the Central Authority or other competent authority from the nation of the child's habitual residence)? (Article 13)

7. If the taking or retention was wrongful, would return violate the fundamental principles of the United States relating to the protection of human rights and fundamental freedoms? (Article 20)

These same questions of fact and application of law apply to petitions for access (visitation) under Article 21.

Article 16 makes it clear that the court in the United States could not enter a custody order until it has been determined that the child shall not be returned or unless the petition has not been timely filed. This does not require a federal court to enter a custody order; the court could dismiss a petition for an order of custody for lack of jurisdiction and refer the petitioner to the appropriate state court.

Second, in the experience of the Center and the State Department, there are less than 100 such cases per year in the United States. As a practical matter, some of these cases will be petitioned in a state court under Article 23 of the Uniform Child Custody Jurisdiction Act, which clearly provides authority to enter and enforce foreign custody and visitation orders, because the state court caseload will permit a more expeditious proceeding. Further, if the Hague Convention serves as a deterrent function as anticipated, the number of these cases should decline each year. Therefore, the Center does not believe that federal court judges will become embroiled in custody disputes

in the sense of a burdensome addition to the federal court civil caseload.

Finally, the Center believes that federal judges already have the expertise required for deciding these cases. The proceedings envisioned under the International Child Abduction Act have some similarity to deportation proceedings, with which federal court judges have experience. Recently, a number of federal courts have had at least some experience in child custody in deciding tort suits for interference with custody that had been brought under diversity jurisdiction.

The Center is sensitive to the concerns of the federal judiciary and the respect for the traditional distribution of powers between the states and the federal government. However, given the fact that these disputes arise in part because of the immigration policies of the United States, and also involve the interpretation of obligations under an international treaty, we believe that federal court jurisdiction is necessary to encourage uniformity of application of the Convention.

Given the limited nature of the judicial inquiry under the Convention and this limited number of cases, we simply do not believe that either the state courts or the federal courts will be involved in the underlying merits of these cases. State courts will continue to be deeply enmeshed in the complexity of child custody decisions-- ascertaining the "best interests of the child"--that state courts make when resolving domestic interstate child custody disputes.

We appreciate the support Congress has shown for this legislation and especially the desire shown by the members to expedite its passage.

Thank you for your consideration in this matter.

Sincerely,

David W. Lloyd
General Counsel

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February 26, 1988

The Honorable Howell Heflin
Chairman, Subcommittee on Courts & Administrative Practice
Committee on the Judiciary
United States Senate
223 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senator Heflin:

Thank you for sending me Senator Thurmond's question regarding the grant of concurrent jurisdiction to federal and state courts for petitions brought under the International Child Abduction Act (S.1317), submitted to the Subcommittee on Courts and Administrative Practice hearing on S.1347 this week.

Senator Thurmond questioned whether the concern that federal judges would be embroiled in contested custody cases (disputes that the Center agrees are generally best left to the state family courts to resolve) is a justifiable concern. In the Center's opinion this is not a justifiable concern for the reasons that follow.

First, the Hague Convention on the Civil Aspects of Child Abduction does not provide authority for either a federal or a state judge to become embroiled in a custody dispute. Articles 12 through 20 do not require a federal or state judge to issue an order on the basis of "the best interests of the child"--the traditional standard in domestic custody disputes, and one which state family court judges are clearly more experienced to ascertain than federal judges. Instead, the primary task for the judge will be to determine a number of facts and apply the law, neither of which is beyond the traditional competence of federal judges. Such determinations include:

1. Was the removal or retention wrongful according to the law of the child's habitual residence, using information provided by the Central Authority of the nation of the child's habitual residence or taken by judicial notice? (Articles 3, 12, 14, and 15)

2. If so, were the proceedings commenced within one year from the date of the removal or retention? (Article 12)

3. If the proceedings were not commenced within one year from the date of the removal or retention, has the party opposing return proved that the child is now settled in his/her new environment? (Article 12)

4. If the taking or retention was wrongful, had the party seeking return voluntarily failed to exercise the custody rights or consented to or acquiesced in the removal or retention? (Article 13)

5. If the taking or retention was wrongful, and using information about the child's social background provided by the Central Authority or other competent authority from the nation of the child's habitual residence, would return place the child in grave risk of physical or psychological harm or otherwise in an intolerable situation? (Article 13)

6. If the taking or retention was wrongful, and using information about the child's social background provided by the Central Authority or other competent authority from the nation of the child's habitual residence, has the child reached the age and level of maturity where the judge should take account of his/her objections to return? (Article 13)

7. If the taking or retention was wrongful, would return violate the fundamental principles of the United States relating to the protection of human rights and fundamental freedoms? (Article 20)

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Article 16 makes it clear that the court in the United States could not enter a custody order until it has been determined that the child shall not be returned or unless the petition has not been timely filed. This does not require a federal court to enter a custody order; the court could dismiss a petition for an order of custody for lack of jurisdiction and refer the petitioner to the appropriate state court.

Second, in the experience of the Center and the State Department, there are less than 100 such cases per year in the United States. As a practical matter, some of these cases will be petitioned in a state court under Article 23 of the Uniform Child Custody Jurisdiction Act, which clearly provides authority to enter and enforce foreign custody and visitation orders, because the state court caseload will permit a more expeditious proceeding. Further, if the Hague Convention serves as a deterrent function as anticipated, the number of these cases should decline each year. Therefore, the Center does not believe that federal court judges will become embroiled in custody disputes in the sense of a burdensome addition to the federal court civil caseload.

Finally, the proceedings envisioned under the International Child Abduction Act have some similarity to deportation proceedings and with tort suits for interference with custody brought under diversity jurisdiction, with which federal court judges have experience.

The Center is sensitive to the concerns of the federal judiciary and the respect for the traditional distribution of powers between the states and the federal government. However, given the fact that these disputes arise in part because of the immigration policies of the United States, and also involve the interpretation of obligations under an international treaty, we believe that federal court jurisdiction is necessary to encourage uniformity of application of the Convention.

I will be happy to answer any further questions you or any of the members of the Subcommittee have. We hope that the Senate will move expeditiously in considering this legislation.

Sincerely,

David W. Lloyd

David W. Lloyd
General Counsel

Senator DIXON. Well, I thank you very much, Mr. Lloyd, for your very enlightening statement. I thank you for complying with the 10-minute limit in the interests of time. And both of your statements of course in full will be admitted into the record.

Mr. Phillip Schwartz, International Academy of Matrimonial Lawyers, American Academy of Matrimonial Lawyers. Thank you, Mr. Schwartz, for coming here today.

STATEMENT OF PHILLIP SCHWARTZ

Mr. SCHWARTZ. I first want to point out, my name has been misspelled. It should be S-c-h-w.

Senator DIXON. S-c-h-w-a-r-t-z. I want to say to you, Mr. Schwartz, that's the way we spell it in Belleville, IL. My mother was a Tebbenhoff, her mother before her a Washausen. And I don't know how anyone would spell Schwartz without the "c-h" in it. Let the record be corrected.

Mr. SCHWARTZ. Thank you.

I am here on behalf of the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. I'm the president of the U.S. chapter of the International Academy.

Both of these academies vigorously support the bill before you, the International Child Abduction Act. The two academies are composed of practicing attorneys who meet stringent standards of admission.

They know intimately well the frustrations and tragedy of international child abduction. In the interests of brevity, I am going to get right to the two portions of the act about which questions have been raised.

Section 102(a) provides for the concurrent original jurisdiction in State and Federal courts. It is our view that concurrent jurisdiction is not an anomaly. Congress has many times included in legislation that State and Federal courts would have concurrent jurisdiction.

Examples of that would be the Jones Act, the Federal Employers Liability Act, the Fair Labor Standards Act, and the Civil Rights Act.

In addition, the fear of Federal judges that they will become embroiled in full-blown contested custody cases is, I believe, misplaced. The convention and the act are explicit to the contrary.

Ms. Hoff has detailed various types of analogous cases in family law in which Federal courts have found jurisdiction without entanglement in the underlying matrimonial dispute.

Perhaps the overriding reason for the grant of Federal jurisdiction is one of achieving fairness. It would enhance acceptance and compliance by a citizen of a foreign country who will more likely regard a Federal court as a neutral forum not prejudiced by parochial ties.

Most Federal courts operate on a faster track than State courts, which would greatly benefit the child in a Hague Convention case.

In point of fact, my personal preference is that only the Federal courts would have jurisdiction. They are more competent in interpreting treaties, and would attempt to develop a more uniform case law. I don't want to muddy the waters at this point on that issue.

Nonetheless, the converse would be worse. For to delete Federal jurisdiction entirely would create an absurd result, namely, Federal legislation imposing exclusive jurisdiction onto State courts to interpret and carry out an international treaty to which the United States is a party.

In addition, some concern has been raised over section 102(d), which imposes a higher burden of proof on a person opposing the return of a child to his home country.

Shifting the greater burden to one party is not an unusual approach in family law. In addition to the situations to which Ms. Hoff alluded, there are others which are tantamount to placing a higher burden of proof on one party.

An example would be the requirement that a moving party seeking a change in child custody must prove there has been a substantial change in circumstances. Although that is more accurately a question of quantum of proof, nonetheless it demonstrates judicial acceptance of shifting higher burdens onto one party where the context justifies it.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Schwartz and responses to written questions follow:]

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*ALSO MEMBER OF DISTRICT OF COLUMBIA BAR

TELEX
892320

February 22, 1988

SUMMARY OF STATEMENT OF

PHILIP SCHWARTZ

On Behalf of The

American Academy of Matrimonial Lawyers

And

U. S. Chapter of the International Academy of Matrimonial Lawyers

The American Academy of Matrimonial Lawyers and the U. S. Chapter of the International Academy of Matrimonial Lawyers wholeheartedly support the passage of S. 1349, the International Child Abduction Act.

Both organizations have long been in the vanguard in promoting U. S. ratification of the Hague Convention on the Civil Aspects of International Child Abduction and we urge early approval of the implementing act to put the Convention into force in the U. S.

The grant of concurrent jurisdiction to federal and state courts in Section 102 (a) is a reasonable approach. We prefer exclusive jurisdiction in the federal courts, but the reverse, where state courts would have exclusive jurisdiction, would be totally inappropriate because it would create the anomalous situation of Congress giving state courts exclusive power to interpret an international treaty.

We also support Section 102(d), which imposes a higher burden of proof on the party opposing the return of the child to its home country. It is not uncommon in the law to require a litigant seeking a change of status or an exception to a general rule to carry a higher burden.

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RESUME OF PHILIP SCHWARTZ

Philip Schwartz is a principal in the law firm of Schwartz, Ellis and Sullivan, Ltd., with offices in Arlington, Virginia, and he practices law in Virginia and the District of Columbia. His practice emphasizes international family, tax and inheritance law. He received his J.D. degree from George Washington University in 1959 and an LL.M. in Taxation from Georgetown University in 1961. He is a Certified Fellow of the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. He is the Secretary of the International Academy of Matrimonial Lawyers and the President of its U. S. Chapter. In addition, he acts as the liaison from the American Academy of Matrimonial Lawyers to the International Academy.

In the American Bar Association, he is presently Chairman of the Federal Legislation and Committee of the Section of Family Law. He is also Chairman of the International Law Section's Subcommittee on the Recognition and Enforcement of Foreign Judgments. He has been Chairman of the Section of Family Law's Committee on International Laws and Procedures, 1983-86, and the Section of General Practice's Committee on the International Exchange of Attorneys for the Southeast Region of the U. S., 1973-75.

In the International Bar Association, he is currently its Liaison Officer with the International Monetary Fund and Vice Chairman of its Family Law Division. He has been requested to speak in Moscow in June on international inheritance law at a seminar jointly organized by the International Bar Association and the Association of Soviet Lawyers.

In the Virginia State Bar, he is a member of the International Law Section's Board of Governors, is its liaison to the American Bar Association and Chairman of its Legislative Committee.

Mr. Schwartz is also an active member of the Family Law Working Gorup of the Union International des Avocats and has been accepted for Associate membership in the Solicitors Family Law Association of England. He has lectured at seminars and conferences in London, Berne, Munich, Madrid, New York and Paris and in many cities in the U. S. and has authored many articles on family law. Currently, he is writing and editing a treatise on international family law.

STATEMENT OF

PHILIP SCHWARTZ

On Behalf Of The

American Academy of Matrimonial Lawyers

And

U.S. Chapter of the International Academy of Matrimonial Lawyers

Before The

Subcommittee on Courts and Administrative Practice

Committee On The Judiciary

United States Senate

In Support Of

S. 1349
The Proposed "International Child Abduction Act"

February 23, 1988

Mr. Chairman, Members of the Subcommittee:

As Ms. Hoff stated, my name is Philip Schwartz and I practice law in Virginia and the District of Columbia. My practice emphasizes international family, tax and inheritance law. I am very pleased to appear before you today in support of so important a matter.

I would like to join Ms. Hoff in praising your willingness to give priority to considering passage of S. 1349, the International Child Abduction Act.

The Act has garnered widespread support amongst the U.S. legal community concerned with child abduction. The governing councils of the ABA's Family Law Section and International Law Section both adopted last August a resolution which I drafted to urge Congress to expeditiously pass the Act.

In addition, I am pleased to tell you that I have come here also on behalf of the two premier organizations of practicing family lawyers in the U.S., both of which wholeheartedly support the bill before you. These organizations are comprised of a select group of certified fellows who specialize in family law. I am speaking of the International Academy of Matrimonial Lawyers, of which I am the President of its U.S. Chapter and of the American Academy of Matrimonial Lawyers, of which I am its Liaison to the International Academy.

We believe that the Hague Convention on the Civil Aspects of International Child Abduction, which cannot go

into force in the U.S. unless the bill before you is enacted, is a critical and indispensable advance in the worldwide effort to reduce the incidence of international child snatching. The tragic effect on abducted children and the left-behind parent is well documented and requires no further comment from me. Putting the Convention into force in the U.S. will begin the process of discouraging international forum-shopping with the child as the defenseless pawn in the ongoing contest between its parents.

To convey to you the family law bar's urgent concern for putting the Convention into force, I am pleased to report to you that I have obtained approval from the ABA's Family Law Section to conduct a program on the Convention and the Act at the ABA's next annual meeting in Toronto this August. I have also planned a program on this subject for the annual meeting of the U.S. Chapter of the International Academy of Matrimonial Lawyers here in Washington this April.

Furthermore, I am seeking approval from the organizations that I am here representing to conduct seminars nationwide to educate family lawyers and the general public on what the Convention can do and how to proceed under it. This effort is born of the realization that the Convention's success in this country will largely depend on the family law bar becoming acutely aware of the Convention's procedures.

Ms. Hoff's expertise on the Convention has no peer, as evidenced by the erudite analysis she prepared for the State

Department and by her presentation today. I would not deign to comment beyond what she has already set forth.

From a practicing lawyer's vantage point, however, I would like to say a few words on two provisions in the Act about which some questions have been raised.

Section 102(a) of the Act provides for concurrent original jurisdiction in state and federal courts in the U.S. under the Convention. Such concurrent jurisdiction is not an anomaly. Where Congress has concluded there is a justifiable need for it, Congress has included concurrent jurisdiction in legislation. The most obvious example is diversity jurisdiction in the federal courts. What's more, in those cases the federal courts must apply the appropriate state's substantive law. There is a large body of other cases where a state court has jurisdiction, along with the federal courts, to adjudicate a federal cause of action and Congress has not withheld jurisdiction from the state courts, or has expressly conferred jurisdiction on them; for example, certain cases under the Federal Employers Liability Act, the Jones Act, the Federal Fair Labor Standards Act and the Civil Rights Act.

The fear of federal judges that they may become embroiled in full-blown contested custody cases is misplaced. The Convention and the Act are explicit to the contrary. Ms. Hoff has detailed various types of analogous cases in family law in which federal courts have found jurisdiction without

entanglement in the underlying matrimonial dispute. Perhaps the overriding reason for the grant of federal jurisdiction is one of achieving fairness. It would enhance acceptance and compliance by a citizen of another country who will more likely perceive the federal court as a neutral forum not prejudiced by parochial ties. Most federal courts operate on a faster track than state courts, which would greatly benefit the child in a Hague Convention case. The child's state of limbo would be abbreviated and the opportunity of the abducting parent to brainwash the child would be curtailed.

In point of fact, my personal preference is that only the federal courts should have jurisdiction because they are more competent in interpreting treaties and would tend to develop a more uniform case law. However, I do not want to muddy up the case for passage of the enabling Act at this juncture. Nonetheless, the converse would be worse, for to delete federal jurisdiction entirely would create an absurd result: federal legislation imposing exclusive jurisdiction onto state courts to interpret and carry out an international treaty to which the United States is a party.

Some concern has been raised over Section 102(d), which imposes a higher burden of proof on the person opposing the return of the child to his home country. Shifting the greater burden to one party is not an unusual approach in family law. In addition to the situations to which Ms. Hoff alluded, there are others which are tantamount to placing a higher

burden of proof on one party. An example would be the requirement that the moving party seeking a change of child custody must prove that there has been a substantial change of circumstances. Although this is more accurately a question of a higher quantum of proof, nonetheless, it demonstrates judicial acceptance of shifting higher burdens onto one party where the context justifies it.

I am pleased to have had this opportunity to speak before you and would be glad to answer any questions you might have of me. I would appreciate the Chairman allowing me to place my written statement in the record of these hearings.

Thank you, Mr. Chairman and your colleagues on the Subcommitee.

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March 3, 1988

Honorable Howell Heflin
Chairman, Subcommittee on Courts
and Administration
Senate Judiciary Committee
223 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Heflin:

I am writing with regard to the request in your February 25th letter that I respond to the question posed by Senator Strom Thurmond. Enclosed is our response on the form you sent me.

On behalf of the American Academy of Matrimonial Lawyers and the U. S. Chapter of the International Academy of Matrimonial Lawyers, I would like you to know how pleased we are at your giving the International Child Abduction Act such priority attention.

In addition, we deeply appreciate your acknowledgment of the special expertise of both Academies in asking us to testify before your Subcommittee.

Should Senator Thurmond or other members of the Subcommittee have any further questions, we would be pleased to respond.

With my best wishes, I am

Sincerely yours,

Philip Schwartz

PS:bma
Enc.
CC:James T. Friedman, President
American Academy of Matrimonial Lawyers

Gerald L. Nissenbaum, Esquire
International Academy of Matrimonial
Lawyers

QUESTION SUBMITTED BY SENATOR THURMOND

QUESTION FOR ANY MEMBER OF PANEL II

This legislation provides for concurrent jurisdiction in state and federal courts. There is some concern among federal judges that a grant of concurrent jurisdiction will embroil them in contested custody cases - disputes best left to the state family courts to resolve. Do you believe such concerns are justified.

ANSWER

We believe the federal judiciary's concern is unjustified. First, we are not talking about many cases. It is estimated that the total number of cases in the United States under the Convention each year will range from 30 to 50, based on current figures, which will be spread between the federal and state courts. If the Convention works well, it will discourage child snatching and, thus, will decrease the number of cases.

The cases themselves will principally deal with one narrow issue: Whether the abducting parent opposing the child's return to its country of prior residence can establish one of the exceptions to such a return. This will not require custody-type evidentiary trials, which the Convention and Act specifically do not permit.

Use of the federal courts will promote the development of an orderly and uniform interpretation of the Convention. After a period of years of federal court decisions, there will be greater use of state courts and less of federal courts. The reason for this is that state courts would then be able to look to federal decisions for authoritative interpretations of the Convention, rather than relying on sister state decisions.

What's more, the early success of the Convention may literally depend on the availability of federal court jurisdiction. A foreign parent from whom an American citizen has abducted their child to the United States will more likely regard a federal court as being unbiased and neutral than a state court. In the near-term years, the willingness of foreign countries to return abducted children to the United States will depend on how well they perceive our courts as being neutral arbiters and complying with the spirit as well as the letter of the Convention.

If only state courts were granted jurisdiction, the result would be an anachronism in the law, to wit, granting exclusive jurisdiction to state courts to interpret an international treaty to which the United States is a party.

March 3, 1988
Date

Philip Schwartz, Esquire
on behalf of the American
Academy of Matrimonial Lawyers
and the United States Chapter of
the International Academy of
Matrimonial Lawyers

94-084 0 - 89 - 5

Senator DIXON. Well, thank you very much, Mr. Schwartz. Thank you for complying to our 10-minute limit. It's very kind of you. Your statement will be admitted in the record in full. I thank you for all of it.

I have been requested to place a statement in the record from Mr. Thomas Alexander, Jr., which I hold in my hand, and that will be done. That will be placed in the record without objection.

[The prepared statement of Mr. Alexander can be found in the appendix.]

Senator DIXON. Incidentally, the Judiciary Committee staff has indicated that the committee has another hearing they would like to start at 3:15, in 10 minutes. So it will necessarily shorten to some extent my questions of the three of you. But I would appreciate it very much if each of you, although obviously members and people who are here who are not part of the government are not expected to do this as a matter of course, but if you would accommodate us by answering our written questions on this subject, we would greatly appreciate it.

Now, I just want to say one thing to you from a practical standpoint: I agree wholeheartedly with you on this concurrent jurisdiction question. I have no reservations about publicly stating that.

I think we better pursue very carefully the question of how committed the administration is to another course, because there is a time factor involved here that concerns me some.

But I am fully of the opinion that all of you are quite right, that we ought to keep jurisdiction in the Federal courts as well. I see that as an important consideration that ought to be adhered to here.

I have no doubt that the Congress has no problem about that, may I say. You understand the facts of political life and the concerns we might have if there was a really serious reservation about this.

I really don't see any other thing here that is a matter of any profound concern, other than what you have suggested.

May I say that I would encourage you to keep in close touch with those on my staff and those here in the Judiciary Committee.

I have some questions here that I could ask. But I pretty much know what your answers would be, to be candid with you, and our points of view would be so similar that I don't think I need to do that, beyond saying that we recognize this as a serious problem.

It needs our immediate attention, and we want to give it that. I certainly want to retain this concurrent jurisdiction in the bill, if it is at all doable, and I expect quite frankly to just go forward that way until somebody suggests something that is earthshaking to the contrary. I don't think we're going to have any trouble in the committee, on the floor of the Senate about that, all things being equal.

You heard the earlier indications that Congressman Frank is making some changes out of his concern about privacy matters, and I presume you've been in touch with all of that and you know what's unfolding with respect to that.

And that's a thing that doesn't bother you at all, those changes that are being made.

Ms. HOFF. The need to gain access to information to locate children is vital to the convention, because without that information

this convention is essentially inoperative. And so in redrafting the privacy provision, I understand that Congressman Frank and his staff are cognizant of the need to permit access to information, provided that it is not disclosed to incorrect parties for uses not intended by the treaty.

Senator DIXON. Sure. And that would be how all of you feel about that, I presume.

Well, I want to thank you very much. There will be some written questions that will be sent from my office. I presume that will be true of others, perhaps Senator Grassley, perhaps Senator DeConcini, others.

I want you to know that I will be talking to the chairman of the committee, or his representative, in view of the sad fact this chairman is indisposed for a time because of an operation, as we all know.

But I will try to expedite this to the fullest extent and bring it to the floor. I will talk to the majority leader and the minority leader and others to see whether we cannot expedite disposition of this at a very early opportunity in short order.

I thank you all for being here today. This subcommittee meeting is adjourned.

[Whereupon, at 3:10 p.m., the subcommittee adjourned.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

WRITTEN TESTIMONY OF

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Before the

SENATE COMMITTEE ON THE JUDICIARY

In Support of

S. 1347

THE PROPOSED "INTERNATIONAL CHILD ABDUCTION ACT

February 23, 1988

94-084 O - 89 - 6

Testimony of V.P.
Men International
February 23, 1988

Mr. Chairman and Members of this Committee,

The last time I had the privilege of addressing this committee was on January 30, 1980, when you were kind enough to consider my comments in support of "The Parental Kidnaping Act of 1980", (PKPA), now enacted as PL 96-611; 28 USC 1738A. Thus, I am sure you can understand my pleasure in the fact that Congress is moving with all deliberate speed with this the "International Child Abduction Act", which in my opinion, and in the opinion of those I have the privilege to represent, before this committee, consider as a very necessary adjunct to the PKPA if the intentions of the PKPA are not to stop short at the borders of these United States.

Having had the opportunity to review the testimony of other supporters of the "International Child Abduction Act", I wish to indicate the support of Men International, Inc., and most definitely the support of those whom I personally represent on the North American continent.

My concern is that, once again, the administration seems determined to undermine the very essence of the bill by suggesting that the U.S. District Courts are incapable of handling sensitive issues that pertain to custody of children. Since I personally, at one time, because of my removal from the United States; first to Canada by a Canadian mother; and then to England by a proposed adoptive aunt; held not merely dual-nationality, but in fact triple-nationality, I have always been fascinated by such procedures and problems. But, I am not going to delay this committee with reminiscences of over half a century ago. I am, with the permission of this Committee going to relate some of the practical problems that men and women, who have been the victims of parental kidnaping, have had to face when dealing with various state courts.

The first case may be referred to as the Robinson case. In this case I had been appointed by the Summit County Court of Common Pleas, Ohio, as guardian for a female child, age 5, for the specific purpose of recovering the child back to its home State of Ohio, Summit County. In fourteen days, and travel of over 5,000 miles, I had contact with three states, Ohio, Georgia, and Florida. In each of the states the Ohio order had been registered in accordance with the local law embodied in the Uniform Child Custody Jurisdiction Act (UCCJA), and in fact the Florida Court in Clay County had entered an additional order commanding the return of the child. However, when the child was initially found in Lakeland, Polk County, the Polk County Court, at Barstow, refused to allow the Sheriff's Department to assist in the recovery of the child, either under the Ohio order or under the Clay County Order. This refusal allowed the fugitive time to run and the child was re-discovered in Valdosta, Lowndes County, Georgia. Here again, despite the fact that both the orders of Ohio and of Florida had been previously registered and that it is an offence under Georgia Law to bring a child into the

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State of Georgia, contrary to another state's custody order, Judge Elliott of the Lowndes County Court, commanded the Sheriff not to enforce my orders of custody. I truly believe that if I had not filed a 42 USC 1983 action in federal court at Macon, Georgia, we would most probably still be litigating the return of that child to this date. I am pleased to state that I was advised that that particular judge resigned his office shortly after I commenced suit and that I believe that I had demonstrated sufficient determination that the fugitive left the state just minutes before the Sheriff's office advised that they would assist me to recover the child. Again, I was on the road, and eventually recovered the child in Ohio. I believe that this case demonstrates the fact that the state courts are not respective of the provisions of the PKPA and that to fail to give concurrent jurisdiction to the federal courts would be a tragic mistake for those of other lands that must find their way through our state court systems. It has been said that fewer than 5% of all lawyers practicing domestic relations law even know of the existence af the PKPA. Certainly, my observation of at least two state judges is that they, (the judges), don't care.

Turning for a short moment to the State of Maine, in the Sheriff's office at Bangor, when shown a duly registered Order of Visitation from the State of Delaware and a copy of the PKPA, the deputy stated: "I only follow Maine Law and I don't care what the Federal Law says." This particular officer had to be reminded that he could not hold his office, except that he was sworn to uphold the Constitution and Laws of the United States under Article 6, Clause 2 of the Constitution. Could a private citizen from a foreign country remind such a recalcitrant as forcibly as I did and when the officer got nasty with threats of arrest could such a foreigner stand his ground against such intimidation? I think not.

In a case that may be called the Nussbaumer case I accompanied Mrs. Nussbaumer to Tavares, Lake County, Florida. The Order of Custody out of Media, Delaware County, Pennsylvania was duly registered, but Judge Daniels set aside the Order and awarded custody to the Father. The Circuit Court of Appeals, 2nd Circuit, reversed, and ordered the return to Pennsylvania. At a final hearing in Pennsylvania the father obtained shared custody for 10 months of the year and the mother obtained custody for two months of the year, (summer time). In 1987, the father sought an order in Pensacola, Escambia County, Florida, to terminate the mothers summer custody period. This was answered with a motion to dismiss for lack of jurisdiction under the PKPA, and the judge dismissed the case ordering the children to be turned over to the mother the following Saturday. Nothing daunted, the father then sought an order from Judge Geeker, a judge of the same court, whose office door is just 12 feet from the office door of the first judge and that judge issued an order prohibiting the mother from removing the children from Escambia County. It was these conflicting state orders that allowed Mrs. Nussbaumer to seek and obtain a Temporary Restraining Order and Permanent Injunction in

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Federal District Court, Eastern District of Pennsylvania. As Judge Giles said the purpose of the summer custody is for the benefit of the mother as well as for the children. I think that that federal judge was sufficiently sensitive to the needs of the parties, but more importantly he was by his very position able to enforce what a state court judge deliberately refused to enforce under the provisions of the PKPA.

In a case which may be known as the Wilson case. Mr. Wilson is a sergeant in the United States Army stationed at Fort Benning, Muscogee County, Georgia. He received a temporary order of custody of his two children when his wife deserted him and came to Delaware. Judge Ableman of the Family Court of Delaware for New Castle County refused to allow the order to be registered, initially because the seal of the Muscogee Court was on the cover certificate and then when a new copy was obtained which bore the seal on the document itself again refused by saying that the order had been obtained improperly.

In a case that can only be known as the Indiana case. I travelled with the father to Indiana and registered the order in the appropriate county, but when I asked for certified copies I was refused the same until I managed to convince a judge that I had a right to those certified copies. After I had obtained my certified copies his secretary asked me for them back, which I refused unless I was reimbursed the cost of certification that I had paid. The secretary then asked what I was going to do with them and I told her that I was going to take them to the Sheriff for enforcement. The secretary then advised me that the judge had already called the sheriff and told him that he was not to enforce the order. I then told his secretary that I hadn't eaten so far that day and that I would expect to have an opportunity to speak to the judge after lunch. Fortunately the order called for enforcement by the Department of Welfare as well as Sheriffs, State and County Police, etc. and I then went to the Department of Welfare who assisted in the return of the child, and I departed for Delaware.

In a case that may be known as the Rothschild case. I was one of two guardians appointed out of Pinellas County, Florida. The order of custody was duly registered in Ocean County, New Jersey, and was enforced with the assistance of local police officers. Even this was not sufficient to prevent an over zealous local deputy attorney general from obtaining an arrest warrant for both myself and the other guardian. These were eventually dropped, but I can assure you the lack of federal protection from such baseless charges are no small consideration. I do not think I have to remind this committee of the recent decision in California v. Superior Court of California, ___ US ___, where the real parties in interest, Smolins, were extradited to Louisiana when they enforced what the U.S.Supreme Court stated that the authorities of Louisiana would have to recognize under the PKPA, the valid order of custody issued out of California.

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Finally in a case that is now known as Alexander v. Ferguson, I was the guardian appointed out of Elkton, Cecil County, Maryland. When I first went to Orange County, New York to enforce the Maryland order I ran into obstruction from a local "youth aid" police officer out of the Village of Greenwood Lake. I subsequently learned that he had a personal interest in that the fugitive parent had provided baby-sitting services to this particular officer. Interestingly the fugitive parent had obtained a protective order out of the neighboring county of Rockland, New York, which order did not expire for two more days. When I attempted to enroll the Maryland order in that county as well as the county the fugitive parent was actually living, the judge of the Family Court of Rockland County forbade the Clerk of Court from registering the order saying: "I have already taken jurisdiction of the case." If it were not for the Federal District Court, District of Maryland, Baltimore, Judge Motz, I am convinced we would still be working our way through the appellate process of the State of New York. That particular New York judge had hit upon a very simple procedure to prevent review of his orders. All he had to do was call them temporary orders and thus being interlocutory were not appealable. In this particular case, the result was most devastating as when the children were eventually recovered it was found that the little girl, age 4, had been sexually penetrated, and the suspect was the step-father. I truly believe that if the child had been recovered when first attempted the sexual assault would not have occurred.

I hope these few cases in which I have been personally involved will give some insight to this committee as to why it is so important that federal courts have concurrent jurisdiction of the "International Child Abduction Act".

The recent decision in Thompson v. Thompson, Slip-Op 86-964, January 12, 1988, has dealt a devastating blow to the "left-behind parents" under the PKPA. We can not in good conscience, and as a member nation of the 1980 Hague Convention, allow foreigners coming to our shores to enforce their parental rights to be abused in the manner that I have illustrated herein above. For, surely, if we allow such abuse then the citizens of this nation will also find that their legitimate claims in the member nations of the 1980 Hague Convention will be as badly used when they too seek enforcement.

Thus, there are two recommendations that I offer to this committee for consideration:

1) Every custody order entered in the United States must be registered with the Central Authority.

[We are a highly mobile nation, with over 3,000 jurisdictions. The simple act of registration will not only help the foreign citizen to find his/her child if they have been brought to these shores, but also help our own citizens find their children.]

2) Take such steps as are necessary either by amendment of this Act or by amendment of the PKPA to provide a private cause of action to all the citizens of these United States to seek federal enforcement of custody orders obtained consistently with the provisions of the PKPA.

[Can we, politically, allow a greater right to foreign citizens than we give, according to the U.S. Supreme Court, to our own citizens? But, then, can we deny access to the federal courts to those foreign citizens when our state courts have demonstrated such contempt for the "Parental Kidnaping Prevention Act of 1980".]

The U. S. Supreme Court in Thompson, supra, stated: "[T]he unspoken presumption in petitioner's argument is that the States are either unable or unwilling to enforce the provisions of the Act. This is a presumption that we [the Court] are not prepared, and more importantly, Congress was not prepared, to indulge." It is not a presumption that I have met, rather it is a fact that I have discovered throughout the nation and any success I have had in returning children back into the jurisdiction of the "home state" court has been in spite of, and not because of, these various state courts.

Even more distressing is the fact that in Robertson v. Jones, No. 87-5974, a case that has worked its way up through the State Courts of Delaware, and where the provisions of Section (g) of the PKPA are at issue, the U. S. Supreme Court dismissed, January 25, 1988, just 13 days after Thompson, supra, for lack of jurisdiction. So much for that Court's pronouncement in Thompson, supra, when it stated: "We note as a preliminary response, that ultimate review remains available in this Court for truly intractable jurisdictional deadlocks."

While the U.S. Supreme Court may have a particular notion as to the nobility of the State Court judges, I do not, Nor do I believe that the members of Congress are that far from their constituents not to realize just how important the ability to bring a custody enforcement problem, by right of private action, in the federal courts, is to those who are involved in inter-state custody enforcement actions. To those of European education, state means nation, and the federal courts are the only courts that have nation-wide jurisdiction.

I thank you for your time and hope that I have been of some service to this Committee.

Respectfully,

Thomas Alexander, Jr.
Vice President - North America
Men International, Inc.

PRESENTATION OF ALAN M. HERSHEY
TO SUBCOMMITTEE ON COURTS AND
ADMINISTRATIVE PRACTICES
U.S. SENATE
February 23, 1988

I thank you, Mr. Chairman, for inviting me to speak to your committee, and I applaud the serious attention that the Congress is giving to the problem of international child abduction. I hope that the recounting of my experience -- although it is just one among thousands of cases -- will help your committee see the full range of problems that the Hague Convention on Civil Aspects of International Child Abduction can prevent and resolve. I also hope that my circumstances will underscore how essential it is that the implementing legislation for the Hague Convention be given rapid approval.

I would like to give you a brief description of what has happened to my daughter, Lenka, and the kinds of problems that a parent in my situation runs into in trying to regain lost parental rights. Finally, I would like to point out how your action to implement the Hague Convention can help me. I hasten to point out, however, that I do so in the hope of representing the importance of this treaty for the lives of many other parents. Many members of our organization, American Children Held Hostage, would not be cut off from their children today had this agreement been put in place earlier, and the longer signature is delayed, the more children we will lose.

WHAT HAPPENED TO MY DAUGHTER

I was divorced when my daughter was quite small, and given the strength of tradition, custody was granted in Vermont courts to her mother. From the start, however, I tried to be an active father, struggling to overcome the tensions of divorce and focus on my relationship with my daughter, despite my ex-wife's continual efforts to obstruct contact between us. When my daughter was three-and-a-half years old, her mother, who was born in Czechoslovakia but had lived in this country for twelve years. secretly prepared to leave the United States and move permanently back to Czechoslovakia with Lenka. Such action would have violated the visitation terms of the Vermont court order, and cut me off from contact with Lenka.

I was able to block my ex-wife's departure with a court injunction, and then won a court order that I hoped would prevent another abduction attempt. This order allowed Lenka to spend a week each month in my home. It ordered Lenka's mother to remain in the U.S. at least three more years, spelled out extensive visitation contact throughout Lenka's childhood, and provided that if Lenka were ever living outside the U.S., she would be

free as a teenager to choose to return to the U.S. for her schooling. Under this order, my ex-wife would be allowed to move from the U.S. after the three-year period only if she had succeeded in winning a Czech court order containing comparable guarantees. These terms were negotiated as an agreement between my ex-wife and me, and then incorporated in a Vermont court order.

With this order in effect, and adherence to it secured by financial bonds from my ex-wife, she was allowed to visit Czechoslovakia with Lenka; she immediately reneged on the agreement and remained there. My daughter has been in Czechoslovakia since December 1983. She was three-and-a-half years old at the time.

Within a few months, I went to Czechoslovakia to try to rectify the situation. I had no legal standing in Czechoslovakia to demand Lenka's permanent return to the United States. Czechoslovakia did not recognize her U.S. citizenship, did not recognize the U.S. court order or its violation, and treated her as any Czech child -- despite the fact that she had been born in the U.S. and spoke only English. The Czech courts granted me the right to visit my daughter for three weeks each year, only in Czechoslovakia, and required that I continue sending child support payments to support her there.

THE CONSEQUENCES

For over two years, I saw my daughter fleetingly and under the most trying circumstances. My ex-wife refused to comply even with the Czechoslovak court order, and would not release my daughter to me for visitation in Czechoslovakia, although there was no way that I could leave the country with her. I was able to see my daughter for an hour or so at a time in her back yard, under close supervision and abuse. On one occasion I travelled to Czechoslovakia with hopes of a two-week visit, and never saw my daughter, because she had been sent into hiding somewhere by her mother.

After two years and four trips to Czechoslovakia, and repeated efforts to get the Czechoslovak court to enforce its own order, I finally was able to spend time alone with my daughter. On four occasions, I have been able to see her for a week or two at a time, but still only in Czechoslovakia.

My daughter no longer speaks English; I must get by with her in the Czech that I have learned. She remembers her American childhood friends nostalgically, and weeps openly sometimes at the thought that she "will never see them again." She recognizes the songs she sang as a toddler. She proudly says, "I'm not just Czech, I'm American too, like my Daddy." Although she has the attachment of a seven-year old to her mother, she clearly feels

her attachment to me and our country as well.

Lenka's mother, unfortunately, suffers from rather severe emotional problems. The Czech courts responded to my concerns and ordered psychological examinations by their own experts. Their clinicians raised serious concerns about the effect of her mother's care on Lenka's development, and recommended that she spend extended periods in my care. The courts have ignored that recommendation.

It is very difficult for me to communicate with Lenka from afar. Her mother has no telephone. When I send letters and pictures to Lenka at her home there, her mother destroys them before Lenka receives them. Lenka has asked me to send mail to her school so she can receive it without interference, and I have actually received one letter from her, written from her classroom. She is clearly afraid, however, to express in front of her mother any positive feeling towards me, and so doesn't dare even to write letters to me from home.

WHAT AM I TRYING TO ACCOMPLISH?

Abduction does not only affect custodial parents. In my case, disregard of a court order and removal of my daughter has drastically disrupted the very positive relationship that a child of divorced parents can have even with a non-custodial father. Despite the horrible events I have gone through and my grave reservations about Lenka's present care, I am continuing to focus on reaching a solution which will preserve Lenka's access to both of her parents. It is extremely unlikely that a Czech court would ever grant me custody of Lenka. My hope, therefore, is to win the right to bring Lenka here for long visits each summer, and to return her to her mother in accord with a Czech court order that allows such visits. Violating such an order would cut Lenka off irrevocably from her mother and her other relatives in Czechoslovakia. These other relatives are dear to her and me, and are a source of very important sympathy and support for my efforts to reestablish Lenka's ties to her home here.

My aim is to ensure that Lenka has the opportunity to make free choices in the future. I want her to have the solid conviction that her father's home is hers, to have the experience of ordinary daily life in my home, even if for now only part of each year. I want her to feel comfortable again in English, so that when she is older, options for her to remain here will not be foreclosed.

WHAT HAVE I DONE TO ACHIEVE THESE GOALS?

I have tried everything I could. I have asked the State Department to request the cooperation of the Czechoslovak government, but the meetings it has arranged have had no apparent

effect. My Senators, Bill Bradley and Frank Lautenberg, have kindly written letters on my behalf. My Congressman, Representative Chris Smith, has as a member of the U.S. Helsinki Commission held meetings with Czechoslovak Foreign Ministry representatives in Vienna and Prague. There has never been a meangingful response to our requests for help from the government.

I have been to court hearings about six times in Czechoslovakia. The courts have treated my case quite correctly from a procedural standpoint, and I believe that the authorities have actually developed considerable sympathy for my position. My requests for enforcement of the Czechoslovak court order, and for psychiatric examinations, have been honored. My ex-wife has even been prosecuted for contempt of court for non-compliance with the court's orders. In response to my appeals, the courts have removed the formal visitation clause that restricts my contact with Lenka to Czechoslovakia. To bring Lenka to my home, however, I need either her mother's or the court's approval before I can get the necessary exit visa that Lenka, even with U.S. citizenship, must have to leave Czechoslovakia. In the same action in which it deleted the geographic restriction on my contact with Lenka from its visitation order, the court withheld its approval for the exit visa.

WHAT IS THE CURRENT STATUS AND WHAT CAN HELP?

The only reason given most recently by the Czechoslovak courts for denying my requests for visits in the U.S. is that there is no guarantee that my daughter would return to her mother. I have been told directly by the presiding judge that U.S. failure to sign the Hague Convention is the problem, and that if the U.S. signed this agreement, there would be no obstacle to my daughter's visits to my home.

Without the Hague Convention in force, I have been able only to present my most sincere promises to the Czechoslovak courts, and to offer financial bonds guaranteeing Lenka's return from a visit. These efforts have been to no avail.

Action by the Congress to pass implementing legislation for the Hague Convention, and the President's signature of the treaty, would make the United States part of a framework for international adherence to child custody and visitation orders. In that framework, the Czechoslovak government can find the kinds of guarantees that would protect my daughter's relationship to both of her parents.

U.S. participation in the Hague Convention is an appropriate extension of existing federal and state legislation to ensure enforcement of court actions in family law. Children's rights to a stable home, and their need for the attention of loving

parents, do not change when national boundaries are crossed.

But rapid action is needed. I am submitting a motion again to the Czechoslovak courts, requesting approval for Lenka's travel to my home this summer. Signature of the Hague Convention provides the basis for my argument that the Czechoslovak court should this time grant its approval. Delay of even weeks in Congressional action on implementing legislation, or in the President's signature of the Convention, can mean for me losing a chance at success for this summer, and waiting another full year before I have any chance of bringing my daughter home and enjoying a simple pleasure like going shopping together or making breakfast for her.

My case is unusual, because the Hague Convention will support my efforts by guaranteeing adherence to another country's court order, rather than supporting a child's return by enforcement of a U.S. order. My case demonstrates the wide range of circumstances for which the Hague Convention is an essential international agreement in which our government should participate. My case is perhaps unusual as well, in that I can be helped immediately by the Convention's provisions.

I am fortunate that despite the traumatic events of the past four years, I have preserved my relationship with a wonderful child, whose strength and capacity for love are certainly the mightiest guarantee that I will eventually succeed. I ask you to act rapidly, that that success not be delayed further.

I ask that you act rapidly also for the many other parents whose lives and children you can protect from similar events. Summer is the peak period for child abductions. Only your rapid action can put the Hague Convention in place before summer. To some extent, U.S. signature of the convention may deter some parents from abducting children, if they know that a mechanism exists under which their schemes may be frustrated in the end. Abductions that do occur will be covered by the Convention, and the aggrieved parents will have stronger hopes of redress than do the thousands of parents whose children are already lost.

I thank you again, Mr. Chairman, for the opportunity to appear before you, and hope that the Congress takes rapid action to allow signature of the Hague Convention.

Senate Judiciary Committee
Subcommittee on Courts and
Administrative Practice
Hearing on the Hague Convention on
the Civil Aspects of International
Child Abduction
February 23, 1988

Statement Prepared by Holly Planells
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The first day of this month marked the 18-month anniversary of the abduction of my son, Huey, who was taken to Amman, Jordan by my-ex-husband, Bassam Yousef Aqqad, 26. Bassam is a Jordanian national who was born in Nablus in 1967 but whose Palestinian family fled to Jordan after the Six Day War with Israel. The kidnapping was in direct violation of an American court order that granted me sole custody of my then-2-1/2-year-old son and did not allow Huey's removal from the United States. Bassam had to have permission from the Knox County Chancellory Court in Knoxville, Tennessee, where the three of us lived until June 1984 when I filed for divorce. The man I once loved is wanted for kidnapping of a minor child, a felony in the state of Tennessee.

Bassam and I married on December 23, 1982 at my parent's home in Brentwood, New York. We met while attending school at the University of Tennessee in Knoxville. I was studying Journalism and he was working on his bachelor's degree in business administration. It was not a "green-card marriage" because Bassam chose not to become a U.S. citizen. If he wanted an American residency permit, his sister, a naturalized American citizen, would have gladly sponsored him.

Over the next few months, I saw some frightening changes in my husband's behavior. He insisted I no longer wear revealing clothes such as bathing suits and shorts. I wasn't allowed to associate with my male friends at college or speak about Jesus Christ as my Lord and Savior. Then I realized I was pregnant.

Bassam told me I had to have the baby in Jordan or he would divorce me. Needless to say, I wanted my first child to be born in the United States where we lived -- not the Hashemite Kingdom of Jordan. I was overcome with grief because I feared being left alone to care for my child by myself and I did not want this marriage to fail.

So, out of fear and the fact that I was awfully sick during the

pregnancy, I agreed to have my baby in Jordan. We flew to Amman in June 1983. I spent four months there with his family. He decided to go to America in September 1983 to claim a scholarship and continue his education, leaving me to have my first child in a foreign country without my husband. I was terrified beyond words, especially since the baby was in a breach position and a Caesarian section was nearly inevitable.

Despite these obstacles, I gathered up my strength and said my prayers more than ever. On October 5, 1983, Huey, or Yousef as his Arab family calls him, came into this world weighing 6 pounds, 6 ounces. Thank God, it was a normal delivery and I prepared myself and my new son for the trip home.

I spent my 21st birthday sitting in the American Embassy in Amman waiting to report Huey's birth. I wanted him to have American citizenship even though his father would not allow me to have the baby where I wanted. At first, I thought my having Huey in Jordan would seriously jeopardize any plans of bringing him home (after the abduction), but over the last 1 1/2 years, I realized, through talking with other parents, where the child was born has nothing to do with how the U.S. government will act to insure their return. Most of the abducted children in my organization were born right here in the U.S.A. and they still remain abroad.

Huey and I left Jordan on November 2, 1983 -- two days later the British Embassy up the street from where my ex-husband's family lived was the target of a terrorist attack. The country's airport and borders were sealed so the terrorists could be found. Jordan is a nation subject to siege at any time. The turmoil in the West Bank and Gaza Strip is only minutes away. I gravely fear for my son's safety in that war-torn region.

Several weeks later on American soil, I came down with both types of Hepatitis. I spent Thanksgiving recovering from the potentially dangerous liver disease, which my doctors told me I had contracted from an unsterilized needle in the Jordanian hospital. Over the next six months, Bassam and I fought bitterly. He resented my culture and religion and I resented him for abandoning me in Jordan. He started to restrict my every move. He even forbid me to see my best friend from college -- a Jewish woman.

During this time, his brother lived with us as well as two other Palestinians who could not afford their own place. I could not take this oppressive environment another minute. They all sat around and smoked and talked day after day after day. This was no way to place a baby. So on June 4, 1984, I marched myself and the baby to a lawyer's office to file for divorce. I moved out that day never to return.

Our divorce was finalized on April 5, 1985. Bassam had contested the divorce and wanted custody. Unfortunately, the judge I had did not like the fact that I had taken my son to New York where

my parents live so they could take care of him while I finished my last year of school. Bassam was not ordered to pay any kind of temporary support for me and he only paid $100 a month in child support. Bassam was never denied access to his son. My parents said he could fly up and see Huey whenever he wanted. Bassam certainly had the money since he is the son of a self-made millionaire, but Bassam never saw his son for about 8 months. I was not a kidnapper.

The judge threatened to take away my custody if I did not bring me son back to Tennessee for reasonable visitations. So, my ailing grandmother offered to take care of Huey, a typical toddler, during the week and I would take care of him on the weekends.

During the trial, I told the judge Bassam had threatened to kidnap Huey to Jordan and I wanted Bassam to surrender both Huey's American and Jordanian passports as well as post a substantial bond. I also wanted only supervised visitation. The judge agreed to a $10,000 bond, but I found out the day after the kidnapping that my attorney had never followed through with the court order and the bond was never posted. As far as supervised visitation, the judge permitted such an arrangement for the first few months to see how trustworthy Bassam was during that time. Of course, he did not try anything.

Eventually, I finished my Journalism degree and got a job with United Press International in Atlanta, Georgia in August 1985. Getting this position, meant leaving the state and amending the visitation order so Bassam could see his child fairly regularly. He also moved, but to Nashville in order to finish his degree. Since he would not come to Atlanta and I would not travel to Nashville, we agreed to meet in Knoxville, where we both had family, for at least one weekend a month. At this time, the judge had ordered unsupervised visitation against my protest.

This arrangement worked well for about a year although every time I dropped off my son for a visit, I prayed to God that he would be there the next day. On August 1, 1986, I left Huey with his Dad with every intention of picking him up the following afternoon. But when I arrived at my ex-sister-in-law's home in Knoxville, I was greeted by crying children who told me that Huey and Bassam never came home that night. I called Bassam's family in Amman and Bassam and Huey were there. My worst nightmare was now reality.

I immediately called the State Department and an envoy from the American Embassy in Amman went to confirm Huey's "welfare and whereabouts." Then they sent me

a list of Jordanian attorneys to fight for Huey's custody in a Muslim Shariah court, which has never given custody of what it considers a Muslim child to an American Christian mother who resides outside of Jordan.

Through my job, Senator Albert Gore became interested in my case. He immediately contacted the Jordanian Embassy in Washington. Over the next two months, letters dashed back and forth from the United States and Jordan.

I met with Ambassador Mohamed Kamal and we flew to Jordan in November 1986 along with my Mom. We showed up unannounced at my ex-husband's home. We were invited in and I saw my troubled son for the first time in two months. He was dressed in rags and staring at me like he knew who I was, but was not quite sure. He was traumatized beyond belief. It was as if he had been hit in the head with a baseball bat and regressed emotionally. My Mom and I spent about 10 days in Amman. The Ambassador promised all kinds of things, but delivered nothing. So, My Mom and I visited with my son behind locked doors and guarded by several family members. I tried to bargain with my ex-husband, but nothing worked. He knew I was at his mercy because there was nothing my government or country would do to bring Huey safely home. He laughed at me and told me if I want to see Huey on a regular basis I would have to live in Jordan. We left Jordan the day before Thanksgiving -- a holiday I dreaded because frankly I had nothing to be thankful for.

When I returned home, I was frustrated, depressed and furious. How come no one would help poor Huey? He was a hostage in a foreign land despite his dual nationality. He did not know anything about Jordan, its language, its people and its powerful religion. He was as much of an American as me.

I thought that I could not be the only parent going through this hell. Over the Christmas holidays, I learned I was not alone. WGN in Chicago ran a special about an Illinois mother, Patricia Roush, who had her children abducted to Saudi Arabia and Senator Alan Dixon was assisting her. I called his office and spoke at length with Sarah Pang. I told her I wanted to start

a support/lobby group for parents like Pat and I. During 1987, I spread the word and parents joined forces with Senator Dixon to grab the government's attention and address this grave, but neglected issue.

In addition to Senator Dixon, I contacted tons of other officials to help in my own case. I wrote and received a reply from Jordan's Queen Noor. Her letter said that Huey could not leave Jordan without permission from his father. I also contacted former President Carter, President Reagan and dozens of other Senators and Jordanian/Muslim officials. I am afraid all my contacts could not insure Huey's return.

I went back to Jordan in July 1987 with my Mom. This time Huey did know who I was, but we had to communicate only in Arabic. He did not remember anything about his life in America. Yet, he knew Bassam was keeping him from leaving with me. At one point, he clawed at the door when we had to leave one afternoon. He even whispered in my ear that he wanted to come to America with me. And, I told him in English and Arabic, that I would rescue him someday, somehow and someway.

Currently, my ex-husband is asking for my son's American and Jordanian passports. Originally, Bassam told me he had the Jordanian Embass, in Washington issue Huey a new one, but now he says Huey does not have his own passport. Senator Gore had tried to find out how Jordan could issue Huey a new passport if I had the original ones, but he was told he could not obtain such information despite Huey also being an American citizen. Bassam says if I don't surrender Huey's two passports he will deny me access to my son and keep the American Embassy in Amman from visiting Huey every three months. I may pursue legal action against him in Jordan for passport fraud with the help of the president of the Jordanian Bar Association, whose son saw me on a national TV show and was horrified to hear my story. He says I am entitled to much more under Jordanian law even if I am an American Christian woman!!

Although the Hague Convention on the Civil Aspects of International Child Abduction will not directly effect my case because Jordan does not recognize parental kidnapping as a crime, I urge you to approve the legislation that would implement this important treaty. The convention reflects

a strong worldwide concern about the harmful effects parental kidnapping has on children and the need to deter such conduct. The convention was negotiated in 1980 and ratified by the U.S. Senate in October 1986. It has been long enough. At least eight countries have the convention in force.

The United States should not lag behind the rest of the world and implement this treaty, which would provide hope and assistance for the left-behind parent. Please pass this legislation without delay. Many parents could be reunited with their children once the treaty becomes law. Politicians and officials always talk about strengthening the American family, well now is the chance. Please do not let us down.

At this time, I would like to introduce two ideas Rep. Barney Frank, D-Mass., suggested at the House subcommittee's hearing on the Hague Convention Feb. 3. Congressman Frank said there should be a parallel treaty with the Islamic nations because the Hague Convention was only negotiated with European nations. He said this new treaty would take into account the Muslims' paternalistic bias. Rep. Frank also said international parental child abduction must be part of America's foreign policy. Frankly, this is an area America can be tough, but not obnoxious in the world arena. After all we are dealing with friendly nations that ignore American custody orders. Why should we let our allies ask for handouts when they shrug off American law? Let's stop getting slapped in the face and fight for the rights of American Children Held Hostage.

PRESENTATION OF DR. JOHN KALLOS
TO THE SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
U.S. SENATE
FEBRUARY 22, 1988

I thank you, Mr. Chairman, for the opportunity to submit my testimony on the problem of international parental child abduction and on the urgent need for legislative action to ratify the Hague Convention.

For thousands if internationally kidnapped American children (approximately 10,000 according to American Children Held Hostage), this Hague Convention is their only hope of being reunited with their American family. In most cases these children have not visited nor even seen their American family and friends for several years since they were abducted by their non-custodial parent.

Among these abducted young Americans are my two children, Stephane (12 years) and Genevieve (10 years). Stephane and Genevieve were kidnapped for the fourth time almost two years ago and are still being held in Montreal, Canada by their nonpcustodial mother in direct violation of both U.S. and British Columbian court orders.

As a father I am desperate to be reunited with my children. I have pursued all possible legal and political channels. But after more than a year and a half of struggle with local, state and federal authorities in the U.S., as well as with provincial and federal authorities in Canada, and extensive and expensive litigation in the New York State and Quebec courts, Stephane and Genevieve are still no closer to home.

I hope however, as a result of the expected ratification of the Hague Convention this spring, to have my children back home with me permanently this summer.

Perhaps in telling you my experiences, which add up to a bureaucratic and emotional nightmare (like those of ALL the parental victims), it will help clarify what is wrong with the present system and how we may correct it to protect these helpless young American citizens.

I wish to emphasize the following two points:

1. The present system offers an unfair advantage to international kidnappers leaving the parental victims and their children nowhere to turn for help.

   Neither federal, state nor local officials want to nor are now required to get involved in these cases.

2. It is important that the Hague Convention be ratified as quickly as is humanly possible because each day another American child is lost to our shores.

   In addition, summer visitation is the time when most child abduction occurs. We can only protect our children during their visits to their non-custodial parents abroad if the Convention is in effect prior to their departure.

   In my specific case, Stephane and Genevieve will be returned to me immediately provided that the Convention becomes effective on or before August 15, 1988.* If not, I lose them forever!

I will now give you a brief description of what happened to my children, what I have done to try to bring them home and what I expect to achieve through the Hague Convention.

CASE SUMMARY

Stephane and Genevieve, native New Yorkers, were abducted for the fourth time by their mother Madeleine LaPorte during their summer visit in 1986.

At the time of the abduction I had custody of the children, as well as an agreement guaranteeing their

*Stephane and Genevieve have been wrongfully retained (according to the Convention) since August 15,1986. The Convention MUST be enforced in such cases within two years.

safe return following visitation with their mother in Canada. Both the custody documents and the guarantee orders were filed in New York and Vancouver, B.C. where Ms. LaPorte had been residing.

The guarantee order was issued because Ms. LaPorte had abducted the children on three previous occasions. On the last occasion, having disappeared and been hidden for over a year, the children were located in Vancouver in mid-1984 after a picture of Stephane appeared on the television program Adam. The British Columbian court, after a full hearing, chose to honor the New York State jurisdiction and returned the children to me.

In the summer of 1986, I felt safe sending the children to Ms. LaPorte's new home in Quebec because of the existing Canadian and American custody orders and the document guaranteeing their return. However, instead of honoring these orders, the Montreal court unilaterally overturned the existing decrees and is continuing to protect the abductor.

I am being denied free access to my children despite the fact that the Montreal Crown Prosecutor issued a felony warrant for the abductor's arrest. On September 11, 1986 a hearing in Montreal on jurisdictional issues clearly determined that the New York and British Columbian custody orders were valid, that Ms. LaPorte had lied to the Quebec court when she obtained her interim custody order, that I am a good and conscientious parent, and that the children were happy living in New York. In spite of this, the Quebec judicial system has clearly decided not to recognize the constituted orders from respected courts in other jurisdictions and is determined to protect the abducting parent.

I have had no free visitation with Stephane and Genevieve since the abduction nor have they been able to visit their friends and family in New York. This denial of visitation is being used as a form of pressure to force me to abandon my appeal and give up all of my and my children's rights in the American courts.

ACTIONS TAKEN/BUREAUCRATIC MORASS

Since my children were abducted I have made all possible efforts to be reunited with them. This includes numerous letters to the following officials: the Secretary of State, the U.S. Attorney General, the Governor of New York, the New York Attorney General, the Manhattan District Attorney, many U.S. Senators and Representatives, New York State Senators and Assemblymen and the National Center for Missing and Exploited Children.

I asked them to urge the Canadian authorities, more specifically the Attornels General of Canada and of Quebec, to respect and recognize ixesting U.S. court orders. I received no help whatever from the various representatives of the U.S. local, state and federal agencies. The state and local authorities recommended I go to the State Department and to the U.S. Attorney General. Although it would seem to have been their responsibility, the State Department was unwilling to get involved on the grounds that my problem was a "domestic custody dispute."

When I called the State Department I got the following response: "You parents expect us to send the U.S. Marines to Canada to rescue your kids! If your children are gone, it's up to you to try to get them back."

Although parental child abduction is a felony under New York State law, getting the local district attorney to enforce this law is quite another matter and varies from district to district.

In my case the Manhattan District Attorney, Robert Morganthau, refuses to have his office get involved in such cases. He perceives these cases as "domestic issues" and will not allow his limited budget to be "wasted" on them. Thus I was unable to obtain a state felony warrant which I needed in order to get a federal fugitive warrant.

Several U.S. Senators and Representatives and people at the National Center wrote numerous letters on my behalf to Canadian authorities. The Canadian federal authorities responded that they cannot get involved in my case because it is in the provincial

jurisdiction of Quebec. The provincial authorities in turn ignored all inquiries. I myself met with the Deputy Solicitor General of Canada but to no avail.

However Canadian officials expressed great interest in furthering close cooperation between our two governments and facilitating the return of abducted children. In fact, over the past year there have been several high level U.S./Canadian meetings on the subject. Although my case was presented to the Canadians at one of these meetings no action has been taken.

Then I and several other victimized parents founded a national organization called American Children Held Hostage (ACHH) whose purpose is to focus public and government attention on this urgent issue.

Through ACHH I have worked in close cooperation with Senator Alan Dixon and his dedicated staff -- Sarah Pang in particular. In October 1987, through Senator Dixon, I was able to meet with high level State Department officials. I have gotten no response.

I have attended and been legally represented at numerous court hearings both in New York and Montreal. The New York State Supreme court has issued numerous injunctions and orders which the Montreal court has simply ignored.

THE HAGUE CONVENTION

The Hague Convention is very specific in dealing with cases such as mine. Article 35 can be construed to cover wrongful retention cases which began before the Convention took effect but which continued and were ongoing after its entry into force.

Under Article 17 the harboring state cannot refuse to return the child solely on the basis of a court order awarding custody to the alleged wrongdoer by one of its own courts.

CONCLUSION

As NBC-TV News reported in March 1987, "though Kallos clearly has New York State law on his side, no governmental agency -- federal, state or local -- has been willing to back him or put pressure on the Montreal courts -- not the State Department, not the governor, not the attorney general, not even the Manhattan district attorney!"

I have spent whatever monies I had and have gone deeply into debt in the process of trying to regain Stephane and Genevieve. My career as a senior cancer researcher has been practically destroyed. My children have been completely isolated and cut off from their home, family and friends since July 1986. This isolation is cruel and emotionally unhealthy for the children and has resulted in serious depression and anger.

I crave a return to normalcy. I want my kids home. I want to help them deal with the emotional scars caused by all these senseless abductions. I want to be able to tell them that it can NEVER happen again. With the passage of the Hague Convention all of this will come true.

Gentlemen, I thank you.

AMERICAN BAR ASSOCIATION
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Release: Immediate

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ABA URGES ENACTMENT OF LEGISLATION TO EXPEDITE RETURN OF ABDUCTED CHILDREN

WASHINGTON, D.C., Feb. 23 -- The American Bar Association today urged Congress to move promptly to enact legislation that will enable the United States to bring into force an international treaty designed to safeguard children from the traumatic consequences of international child abduction and to expedite the return of children abducted to foreign countries.

Testifying before a Senate Judiciary subcommittee, ABA witness Patricia M. Hoff noted that the Senate has already ratified the Hague Convention on the Civil Aspects of International Child Abduction. However, she explained, the State Department has postponed bringing the Convention into force in the United States "until legislation is enacted to facilitate the smooth implementation of the Convention throughout this country."

"Immediate congressional approval of this legislation is imperative to allow the United States to join the growing list of countries in which the treaty's remedies are already a reality," she said. Hoff, who serves as co-chair of the ABA Section of Family Law Child Custody Committee, noted that the treaty is already in effect in Australia, Canada, France, Luxembourg, Portugal, Spain, Switzerland and the United Kingdom.

Hoff explained that the treaty is designed to secure the "prompt return of children who have been wrongfully removed

from, or retained outside of, their country of habitual residence, and to facilitate the exercise of visitation rights across international borders." She added that the treaty should have the "effect of discouraging abductions in ratifying countries, thereby protecting children from emotionally and/or physically wrenching upheavals."

The legislation sets procedures for the operation of the Convention in the U.S. legal system. Hoff explained that the "legislation translates the provisions of the Convention -- which are written in general terms to accommodate the legal systems in the many countries that negotiated it -- into more specific procedures familiar to lawyers, judges and government officials in this country.

This "blueprint" will "foster the treaty's smooth and uniform implementation here by averting time- and resource-consuming litigation over substantive and procedural aspects of the treaty," she told subcommittee members.

The legislation provides for concurrent original jurisdiction in state and federal courts to hear return proceedings arising under the Convention and this legislation; places the burden of proving an exception to the return obligation on the person opposing return; and dispenses with the need for authentication or legalization of specified documents submitted pursuant to the Convention.

Conference of Chief Justices

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February 22, 1988

Honorable Howell Heflin
Chairman, Subcommittee on Courts
and Administrative Practice
SH-223 Hart Senate Office Building
Washington, D.C. 20510

Re: S. 1347

Dear Mr. Chairman:

Because the subcommittee has scheduled hearings on S. 1347, legislation to implement the 1980 Hague Convention on Civil aspects of International Child Abduction, I am forwarding the policy position of the Conference of Chief Justices on this Legislation with the request that it be made part of the hearing record.

As you will note, the Conference urges amendment of the bill to (1) give state courts exclusive jurisdiction in all actions under the convention for the return of a child unlawfully abducted or retained and for the enforcement of visitation rights, and (2) authorize the Attorney General, after consultation with the Conference of Chief Justices, to appoint representatives of state court systems to serve on the Inter-agency Coordinating Group that would be created by the legislation.

As the resolultion notes, child custody matters, including custody orders that may require enforcement under the convention, are matters traditionally handled by state courts.

Sincerely yours,

Harry W. Swegle

Harry W. Swegle
Washington Liaison

Encl:

cc: Hon. Robert F. Stephens
Brenda Williams

INTERNATIONAL CHILD ABDUCTION

WHEREAS, the Department of State has drafted federal legislation to implement the 1980 Hague Convention on Civil Aspects of International Child Abduction; and

WHEREAS, the convention establishes legal rights and procedures for the prompt return across international boundaries of children wrongfully removed or retained, as well as securing visitation rights; and

WHEREAS, the implementing legislation, S.1347, would give state courts concurrent jurisdiction with federal courts in actions arising under the convention; and

WHEREAS, the legislation would require courts exercising jurisdiction over a petition filed pursuant to the convention to give notice of the action in accordance with the applicable law governing notice in interstate child custody proceedings, take interim action appropriate under state law to protect the well-being of the child or to prevent the child's further removal or concealment prior to final disposition of the petition, and otherwise resolve questions arising under state law; and

WHEREAS, the legislation authorizes the President, in keeping with the convention, to designate a federal agency to serve as Central Authority for the United States in processing incoming and outgoing requests for assistance, and also authorizes the Secretary of State, the Secretary of Health and Human Services, and the Attorney General to designate federal employees and private citizens to serve on an Inter-agency Coordinating Group to advise the Central Authority on operation of the convention; and

WHEREAS, the Central Authority shall have authority to issue regulations to implement the Act and convention; and

WHEREAS, child custody matters, including custody orders that may require enforcement under the convention, are matters traditionally handled by state courts; and

WHEREAS, the Judicial Conference of the United States has recommended that state courts have exclusive jurisdiction in cases arising under the convention;

Reply to:

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L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

February 26, 1988

Honorable Howell Heflin
Chairman, Subcommittee on Courts and
Administrative Practice
Committee on the Judiciary
United States Senate
223 Hart Senate Office Building
Washington, D.C. 20510-6275

Dear Mr. Chairman:

It has been brought to my attention that your subcommittee recently held a hearing on legislation to implement the 1980 Hague Convention on the Civil Aspects of Parental International Child Abduction (S. 1347). These provisions establish a statutory framework for an international structure to deal with the wrongful abduction or removal by a parent of a child from one country to another. Concurrent Federal and State court jurisdiction is provided to determine whether a child in the United States was wrongfully removed to or retained in the United States. Similar legislation has been introduced in the House (H.R. 2673).

In 1986, the Judicial Conference of the United States was asked by the Executive Branch to review a draft of this measure then being considered for transmittal to the Congress. Viewing most of the provisions as matters of policy for the Congress, the Conference considered only the issue whether Federal courts should have concurrent jurisdiction with State courts over litigation under the convention. The Conference concluded that the bill should be modified to eliminate concurrent Federal jurisdiction under the convention (Conference Report, March 1986, p. 12). A copy of the relevant portion of the Conference proceeding is enclosed.

I would appreciate it if the position of the Judicial Conference could be inserted into the hearing record for consideration of the members of the Subcommittee in this matter.

If you have any questions, please have your staff contact Paul Summitt in the Office of Legislative and Public Affairs (633-6040).

Sincerely,

L. Ralph Mecham
Director

Enclosure

cc: Honorable Charles E. Grassley

[Excerpt from the Report of the Proceedings of the Judicial Conference of the United States, March 12-13, 1986, Washington, D.C., 1986]

to be filed in federal courts. This not only increases the burden on the federal courts, but causes friction with the state court system.

Further, in that actions under the statute may be predicated on federal securities or antitrust violations, the statute overlaps and may tend to confuse well-established separate regulatory schemes.

For these reasons, the Judicial Conference respectfully suggests that the Congress should seriously consider narrowing the reach of this statute.

FEDERAL JURISDICTION UNDER INTERNATIONAL CHILD ABDUCTION CONVENTION

The Hague Convention on the Civil Aspects of International Child Abduction has been signed but not yet ratified by the United States Senate, and implementing legislation to accompany the treaty will be transmitted to both houses of Congress. The draft legislation, which establishes the statutory framework for an international structure to deal with the wrongful abduction or removal by a parent of a child from one country to another, provides concurrent federal and state court jurisdiction to determine whether a child in the United States was wrongfully removed to or retained in the United States.

The sole issue considered by the Committee was whether federal courts should have concurrent jurisdiction with state courts over litigation under the convention. It was the unanimous view of the Committee that state interest in and experience with child custody disputes, coupled with the traditional absence of federal involvement in such matters, justified modification of the legislation to eliminate concurrent federal jurisdiction under the convention. The Conference concurred in the Committee's recommendation, and authorized the transmission of this position to the Department of State.

94-084 (164)